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We have been much interested in the recent address of Mr. Geo. F. Hoar, delivered before the Virginia Bar Association, a review of which we find in a late issue of the *New York Nation*. The subject of the address was the relation of the lawyer to the State, a theme which as a lawyer and a statesman the speaker is well qualified to discuss. The address consisted, in the main, of a collection of facts to show the powerful influence exerted by judges and lawyers in the government of the United States. Mr. Hoar's resume in brief is as follows: Of the fifty signers of the Declaration of Independence, twenty-four were lawyers. The constitutions of the original thirteen States were almost wholly the work of lawyers. Of the twenty-four presidents twenty, and of the twenty-four vice-presidents eighteen, have been lawyers. "To-day the president, the vice-president, the speaker of the house, five of the eight members of the Cabinet, and 302 out of the 446 members of the two houses of congress were bred to the bar." Of thirty-three secretaries of states, all but two, Mr. Everett and Mr. Blaine, have been lawyers.

Coming to the supreme court, it is a fact which will no doubt cause some surprise to any one who has not carefully studied the history of that tribunal, that its power, great as it always has been, is at the present day used with vastly greater freedom than it ever was at any previous period in its history. We are accustomed to look back to the period of Chief Justice Marshall and that of Chief Justice Taney as being those in which, from opposite points of view, the federal bench, and especially the supreme court, were most potent. But the facts, notwithstanding the greater lustre surrounding the names of the earlier judges—and notwithstanding, too, the internal division and weakness revealed by such reversals as those in the legal-tender cases and in the income-tax case—do not bear out this view. The power of the supreme court, as illustrated by its willingness to hold acts of congress invalid as being repugnant to the constitution, seems to have steadily increased. In the first seventy-five years of the court's existence, Mr. Hoar finds but a single case—that of Marbury v. Madison—in which an act of congress was set aside, while since the war there have been fifteen, six of these being political, and dealing with legislation arising out of the civil war. In each of these "the court held unconstitutional the legislation of the political party to which a majority of its members belonged—the party to which that majority had owed its appointment," and so "baffled and brought to naught the policy in regard to the great matter of reconstruction of the party to which I myself belong, and the school of politics in which I have been trained, and which I suppose was also that of a majority of the American people." Such facts undoubtedly show that the bar and bench have a position in the American commonwealth of peculiar significance, and that the relation of the lawyer to the State is one which we cannot too carefully consider.

NOTES OF IMPORTANT DECISIONS.

CONSTITUTIONAL LAW—PENSIONS TO POLICEMEN.—Const. Mo. art. 4, § 47, provides that "the general assembly shall have no power to authorize * * * city * * * or other political subdivision of the State now existing, or that may hereafter be established, * * * to grant public money * * * in aid of, or to any individual, association or corporation whatsoever." An act of the legislature of Missouri required the city of St. Louis to pension policemen who were injured in the service, or the families of policemen killed in service, or of patrolmen who had served on the force for twenty years or more, after retirement, at the discretion of the police board. It was held by the Supreme Court of Missouri, in the case of State v. Ziegenhein, that this statute was an attempt to "grant public money to, or in aid of, an individual," against the constitutional inhibition, and was, therefore, void. The court says, *inter alia:* "It is conceded that the legislature cannot, under the constitution of this State, authorize a city to give money out of its treasury simply as a gratuity, in recognition of past services rendered by its officers. It is claimed, however, that the provisions of the act of April 9, 1895, for the retirement upon half-pay of police officers after 20 years of service, etc., is part of the contract of employment of those appointed since that act took effect, and constitutes a portion of the compensation for the services rendered before retirement; that the act provides, in advance, that the pay of the men upon the force shall consist of the salaries to be drawn during the time they shall hold their places, and half of the same after

they are put upon the retired list. If the argument in support of relator's position could be successfully maintained, it would avail him nothing. He was in office less than two years after the time fixed for the act to go into operation. Eighteen of the twenty years of his service were before there was any provision for such alleged compensation, payable after retirement. If this is to be regarded as an additional salary for 20 years of faithful and efficient work in the police department, the relator would certainly be receiving, in part at least, a gratuity for what he had done before the act went into effect, and before any such compensation as is now claimed was provided. Then, too, the law must be given a prospective operation, and its language indicates that such was the intent of the lawmakers. The words used are 'that any person so employed who shall serve for the period of twenty years or more may * * * be retired from active service.' This would seem to refer to services to be thereafter performed; and, applying the ordinary rules in the construction of statutes, this language would imply that the 20 years of service must be in the future, and necessarily after the passage of the act. The rule is that legislative enactments are held 'to operate prospectively, and not otherwise, unless the intent that they are to operate in such an unusual way, to-wit, retrospectively, is manifest upon the face of the statute in a manner altogether free from ambiguity.' Leete v. Bank, 115 Mo. 184-195, 21 S. W. Rep. 788, and cases cited. The act, however, is in all essential features simply a 'pension law,' and is properly so-called. It cannot be treated merely as providing compensation for services rendered before retirement, and as part of the salary therefor. A salary, payable from time to time during active service, is received by each police officer, and the amount is fixed according to rank. The man who serves 20 years is entitled to no less during that period than he whose tenure is shorter. The policeman who remains on the force for 20 years less 5 days, and the one who retains his office for the full term, are paid during active service precisely the same sum, if they are of like rank. This must be deemed proper compensation for the time actually devoted to the public service. Nothing is withheld from the person who may serve 20 years, to be paid to him after he may be placed upon the 'retired list;' and, after such retirement, he is no longer subject to police duty, and cannot be earning a salary. Acts 1895, p. 235, par. 3. If he has been paid the same as other officers of shorter terms, for the time devoted to public duties, anything in addition thereto can only be regarded as a mere gratuity. The argument of the relator would establish the proposition that it is a mere matter of legislative discretion to give a salary after retirement to all officers of the State and its municipalities, provided they shall be elected or appointed after the passage of an act to that effect. In Mead v. Inhabitants of Acton (Mass.) 1 N. E. Rep. 413, the Supreme Judicial Court of Massachusetts, in discussing a somewhat similar subject, said of the act then being considered, as we feel constrained to say of the one now under discussion: 'In any view we can take of the statute, the payments it contemplates are mere gratuities or gifts to individuals. The principle would be the same if a town should vote a gratuity or pension to one who had rendered service as an officer, or was in any way entitled to its gratitude. This a town has not the power to do, even with the sanction of the legislature.'"

MASTER AND SERVANT — NEGLIGENCE—DANGEROUS PLACE TO WORK.—In Channon v. Sanford Co., 40 Atl. Rep. 462, decided by the Supreme Court of Errors of Connecticut, a servant was sent to a distant place by his master, to work on the interior of a building. The master had no control over the premises, but assured the servant that the staging was safe, and that the contractor in charge of the building would see to it. The servant was told by the contractor, if he desired any additional staging erected, to call upon B, one of the contractor's workmen, to erect it for him. He directed B to erect some additional staging, which staging fell with, and injured him. It was held that it was not the duty of the master, either specially assumed or imposed by law to provide the servant with a safe staging. Andrews, C. J., dissented. The following is from the opinion of the court: "The general rule requiring the master to use reasonable care to provide a reasonably safe place for the servant to work in, and performance of that requirement, as the full measure of his duty in this respect, is well settled in this State. Wilson v. Linen Co., 50 Conn. 433; McElligott v. Randolph, 61 Conn. 157, 22 Atl. Rep. 1094. This was the rule applied in this case in the trial court, and the important question is whether it was applicable under the facts found. The first part of the rule above referred to is usually stated as follows: 'It is the master's duty to exercise reasonable care to provide for his servant a reasonably safe place in which to work.' McElligott v. Randolph, 61 Conn. 157, 161, 22 Atl. Rep. 1094. This, as a general statement of the general rule applicable in most of the cases of this kind, is accurate enough. It is sufficiently accurate as applied to cases like the two hereinbefore cited from our own reports. As thus stated, however, the duty, and the liability arising from a negligent failure to perform it, would appear to rest upon the master at all times and under all circumstances, whenever and wherever his servants may be at work for him; but this, clearly, is not so. There are cases where the servant may be at work for the master, and yet no such duty or liability rests upon the master. In cases where the servant does his work upon staging, scaffolding, or similar structures, it frequently happens that it is the duty of the servant, by force of his employment, to make such structure reasonably safe for his own use. In such cases the general

rule does not apply in favor of such servant. 1 Shear. & R. Neg. (5th Ed.) par. 195, and cases cited; McGorty v. Telephone Co., 69 Conn. 635, 38 Atl. Rep. 359. Then, again, this general rule is not ordinarily applicable to cases where the master neither has nor assumes possession, use, or control, legal or actual, of the premises or place where the servant may be at work. The general rule is based upon such possession, use, and control by the master of the premises where he puts his servants at work for him; and, speaking generally, his duty to use due care to make and keep such place reasonably safe flows from, and is measured by, such possession, use, and control. Just as the master's liability for the acts of his servants while engaged in his business is based upon his power to control them, so his duty to provide reasonably safe premises is founded essentially upon his occupation, use, and control of such premises. This being the reason of the rule, when the reason does not exist the rule is inapplicable. If an employer sends his servant to a distant place, by rail, to do a piece of work on the premises of B, it would hardly be contended, in the absence of a special agreement to that effect, that the master would be responsible to the servant for the negligence of the transportation company in failing to carry the servant safely, or for the negligence of B in failing to keep his premises in a reasonably safe condition. In the case supposed, the servant, both while being carried, and while at work on B's premises, is at work for his master, and the railroad car and the premises of B are places where he is directed to and does perform work for his master; and yet the master, as master merely, would be under no duty to use reasonable care to make such places reasonably safe. The law in such cases reads no such duty into the contract of hiring. If the master assumes possession and control of the premises of B, with his consent, even temporarily, for the purpose of doing the work there, the result might be different. Such a case might be, under certain circumstances, within the reason of the rule. Ordinarily, however, we think the law reads such a duty on the part of the master toward the servant into the contract of hiring only with reference to premises used, occupied, or controlled by the master. If this were not so the duty and liability of the master would be very burdensome. He would be, in effect, frequently made responsible for the negligence of third parties with reference to premises he had never seen, and about the condition of which he knew, and perhaps could know, nothing. The merchant would, in effect, be liable to his clerk for the negligence of the customer with respect to the safety of the premises upon which the clerk goes to deliver his master's goods, and the master plumber or carpenter to his workman for the negligence of the householder upon whose premises he sends the workman simply to make some slight repairs. In all such cases the servant, if injured, without fault on his part, by the negligent failure of the owner or occupier of the premises to keep them in a reasonably safe condition, has his remedy against such owner or occupier, and, in the absence of some agreement to that effect, has none against the master. We think the case at bar, upon a proper construction of the finding, falls within this class of cases. Unless it was the duty of the defendant to furnish the staging in question, the judgment in this case cannot be supported. Such a duty could rest upon the defendant only upon two grounds: (1) Because it had specially assumed it in this case; or (2) because the law imposed it upon the defendant as master. We think the facts found fail to show either that the defendant specially assumed, or that the law imposed, any such duty. If the defendant specially assumed any such duty, that was a fact to be found by the trial court, either expressly or by necessary implication. It is not found expressly, nor by necessary implication. The question on this part of the case is whether, if no such duty rested upon the defendant by law, the facts found warrant the conclusion, as matter of law, that it assumed such a duty. The strongest thing in the finding in favor of such a conclusion is the fact that the defendant assured the plaintiff that the staging would be entirely safe; but this fact, taken either alone or with the other facts found, clearly does not warrant any such conclusion as matter of law. The assurance was given at the very time that the defendant told the plaintiff about the strong staging that had been already erected and in use in the building, and at the very time when plaintiff was informed that Caulfield, and not the defendant, was to see to the staging. What the defendant said to the plaintiff, as detailed in the finding, falls far short of an agreement to be responsible for the staging already built, or to be built, by Caulfield or his servants. The most that can be said about the finding upon this point is that it contains evidential facts tending to prove such an agreement, but such facts do not, as matter of law, constitute such an agreement. Taking the finding as a whole, it is quite clear that it does not show that the defendant specially assumed the duty in question. In justice to the trial court, we ought to say that its decision is not based upon the ground that the defendant specially assumed any such duty, but upon the ground that such duty was imposed by law upon the defendant, as master, under the circumstances; and the remaining question is whether this is so.

"The facts clearly show that Caulfield was, before and at the time the plaintiff went to work in the building, in the exclusive occupation and control of the building and premises and staging, and so remained till after the plaintiff's injury. The building was in New Britain. The defendant's place of business was in Hartford, where plaintiff worked for the defendant. The agreement between the defendant and Caulfield was, in effect, that the defendant should furnish a skilled workman to place the ornament, and Caulfield would furnish staging and all else. The plaintiff

was not informed of the details of this agreement, but this is of no importance on this part of the case. It was important as evidence bearing upon the question whether the defendant specially assumed the duty to furnish staging, but not upon the question whether the law imposed the duty upon the defendant as master. The defendant sent the plaintiff from Hartford to this church building in New Britain to perform this work. The defendant had never been in possession or control of the premises, even temporarily, up to the time the plaintiff went there. It never was, upon the facts found, in possession or control of these premises at all, in any such sense as to make it responsible to its servant for their safety. The case, then, as disclosed by the record, is simply the ordinary one where a master, without more, sends his servant to work upon the premises of B, at B's request. In such case, in the absence of agreement to that effect, the law does not impose on the master the duty of caring for the safety of the servant upon B's premises."

THE NON-LIABILITY OF A MASTER FOR INJURIES SUSTAINED BY AN EMPLOYEE OCCASIONED BY THE NEGLIGENCE OF A VICE-PRINCIPAL AT THE TIME DOING A SERVANT'S WORK.

The rule that a master is not responsible to his employee for injuries caused by the negligent act of a fellow-servant, among other qualifications, is limited to co-workers only, in many of the States, and does not apply when injury is occasioned by the negligence of the *alter ego* of the master, *i. e.*, a vice-principal. The vice-principal doctrine has its own limitation, and is applicable only when the negligent act of such vice-principal is an act which lies within the catalogue of the master's positive duties. It is generally supposed that the latter rule is much controverted but, perhaps, with one or two exceptions, the courts are harmonious, as an examination of the authorities will prove. An almost uniform adjudication will be observed that holds that a vice-principal in rank may not be a vice-principal as regards the act he is doing, and, if not, the master is and should be relieved. The purpose of this article will be to answer authoritatively the following question: Can a vice-principal exercise dual functions? That is, are some of his acts those of the master and others those of a mere servant? Is he a vice-principal as respects all his acts or as to only some of them? If we answer, that part only of his acts pertain absolutely to the master, then the use of the term vice-principal is without significance, as his rank has no bearing whatever in respect of his master's liability. If, on the contrary, we hold that all his acts are attributable to his master, then we recognize him as a legal entity and as a representative of his master, and we further acknowledge his rank as regards the injured party. Here, the character of the act he is doing is immaterial, provided it be done toward the accomplishment of a common object; there, it becomes the all important point to decide. The reason for such apparent conflict of opinion, seems to arise from a different conception of the term vice-principal. When we hold a master not liable a vice-principal must be "one who, with authority, performs a master's duty." But when we desire to hold him responsible we must enlarge the term thus: "He is a vice-principal who is intrusted by the master with power to superintend and control the workmen engaged in the performance of the work,"[1] irrespective of the character of the work which he may perform while so intrusted. The courts which hold a master not responsible in determining the rights of the parties, strike directly at the ascertainment of the character of the work performed by the employee causing the injury, and should it appear that the act was among the positive and non-assignable duties of the master, the master is liable no matter what position soever such servant occupied at the time the negligent act was committed.[2] The leading case so far as authority extends is Baltimore & O. Ry. Co. v. Baugh,[3] decided in 1892. In that case plaintiff, a fireman, was injured through the negligence of the engineer. The engine was a "helper" used in helping other engines in drawing heavy trains over a hill; and when returning from its expedition was not controlled by a conductor but by the engineer. There was a rule of the company to the effect that when there was no conductor aboard a train the engineer shall be regarded as a conductor. When without such regular conductor plaintiff was injured through the negligence of the engineer. Held, that the engineer was a fellow-servant notwithstanding the company's rule; that the

[1] Russ v. Wab. West. Ry. Co., 112 Mo. 45, 20 S. W. Rep. 472.

[2] Stockmeyer v. Reed, 55 Fed. Rep. 259 (1893); Reed v. Stockmeyer, 74 Fed. Rep. 186 (C. C. A. 1896).

[3] 149 U. S. 368.

question must always be determined according to the real powers and duties of the official and not simply to the name given to the office; that, *prima facie*, all engaged under a common master in a common service are fellow-servants, and other evidence than that merely of control must be shown to break down the presumption; that "the question turns rather on the character of the act than on the relations of the employees to each other. If the act is one done in the discharge of some positive duty of the master to the servant, then negligence in the act is the negligence of the master; but if it be not one in the discharge of such positive duty then there should be some personal wrong on the part of the master before he is held liable therefor."[4] A more perspicuous case cannot be found than Stockmeyer v. Reed[5] where the facts briefly stated were: Defendant owned a stone quarry, and had a superintendent in charge. This superintendent with full knowledge of the circumstances directed plaintiff to clear away some rubbish underlying the stone to be quarried. While plaintiff was employed as directed, the superintendent negligently with his own hands pounded and pried some rocks overhanging plaintiff so that they fell upon and injured him. The master was held not liable. Baker, District Judge, in his opinion, says very pointedly, "The question is not one of rank." If the superintendent "was acting at the time in the capacity of a fellow-servant his negligence caused the plaintiff's injury" the master is not liable. "Notwithstanding his superior power, such superintendent is still a servant, and, in respect to such acts and work as properly belongs to a servant to do, he is, while performing them, discharging the duties of a servant." Further on he says, "that the master should be held responsible for every act of negligence of a servant, whatever his rank, who is charged with the performance of those duties devolved by law on the master where the negligent act of such servant has relation to the performance of the master's duties; and that such servant, when performing such work as properly pertains to a servant to do, is the fellow-servant of all others engaged in the common service." In this case the proximate cause was held to be the "careless and negligent acts of the foreman in pounding and prying on the stone" and this pertained to the duties of a servant. On appeal[6] it was likewise held that the paramount question to be ascertained was in what capacity the foreman was acting when he committed the negligent act,[7] thus totally abrogating the feature of rank and sustaining more fully the doctrine that a vice-principal may occupy a dual relation. Let us now turn our attention to decisions in the State courts. In Arkansas[8] a refused instruction, that "a foreman of a bridge gang is, so far as any work or labor done or performed by him, also a fellow-servant with a carpenter in the same service; and this is so even if the foreman had a right to employ or discharge the carpenter. And if plaintiff was injured by the failure of the foreman to perform his tasks or work undertaken by him in a skillful manner" the master would not be liable, should have been given. The court further held that the foreman, in negligently wrapping the rope of the block and tackle round a brace of the bridge, in order that an engine could pass under, which said act of the foreman caused the injury to plaintiff, was not performing a master's duty, thus entirely confirming the first definition of vice-principal hereinbefore given.[9] Tennessee likewise holds the master exempt from liability as appears from the following case, where a distinction is recognized between the personal negligence of the foreman, and his negligence in a matter in which he represented his master as his vice-principal; or in the terse words of the court "between personal and official negligence,"[10] and this doctrine was very forcibly recognized in a very recent case.[11] Indiana follows the same rule and holds that the title or rank of the negligent servant does not constitute the test; but the decisive point is in

[4] Citing Nor. Pac. Ry. Co. v. Herbert, 116 U. S. 642; Hough v. Railway Co., 100 U. S. 213. See, also, Stockmeyer v. Reed (U. S. D. C.), 55 Fed. Rep. 259.

[5] 55 Fed. Rep. 259 (1893).

[6] Reed v. Stockmeyer, 74 Fed. Rep. 186 (C. C. A. 1896).

[7] See, also, Quinn v. N. Jer. Light Co., 23 Fed. Rep. 363.

[8] St. L., A. & T. Ry. Co. v. Torrey, 58 Ark. 217, 24 S. W. Rep. 244.

[9] Citing Fores v. Phillips, 39 Ark. 17; Crispin v. Babbitt, 81 N. Y. 516; Quinn v. Lighterage Co., 23 Fed. Rep. 363.

[10] Allen v. Goodman, 92 Tenn. 385, 21 S. W. Rep. 760 (1893); citing Mining Co. v. Davis, 90 Tenn. 711, 18 S. W. Rep. 387; L. & N. Ry. Co. v. Lahr, 86 Tenn. 340.

Ill. Cent. Ry. Co. v. Bolton (Tenn.), 41 S. W. Rep. 442 (June, 1897).

determining the character of the duties imposed upon such servant; and which, at the time of the injury to his fellow, he was performing. "Whether," the court says, "the master assumes to discharge those duties in person or intrusts them to another he is in either case regarded as an actor. The agent to whom he intrusts such duty, regardless of his rank, acts as the master and in his place.[12]

Thus, in Connecticut,[13] it was held that a servant may hold a dual capacity. New York,[14] Pennsylvania,[15] Michigan,[16] and all the better authorities, excepting, perhaps, Ohio, hold that the master is exempt from liability.[17] In Hoke v. Railway Co.,[18] the following language was used: "The fact that he is a vice-principal does not make all his acts the acts of a vice-principal." The doctrine would seem to be settled in Texas by the following case,[19] but that jurisdiction is not entirely free from conflict. There, however, a statute exists which defines fellow-servants and vice-principals. It will be observed that all the above mentioned cases seem to turn upon the question of assumption of risk, *i. e.*, that a servant assumes the risk attending the performance of any act by any other servant, which act is peculiarily within the province of a fellow-servant's duty, and applying this rule to the following cases, the apparent conflict will be brushed aside. Let us now turn our attention to two Missouri cases, where a doubt may be entertained regarding the doctrine there held. In Dayharsh v. H. & St. J. Ry. Co.,[20] a vice-principal who had charge of the round house, and of the engines therein, and having authority to direct the movements of such engines, voluntarily, with his own hand, and as a co-laborer would have done upon the former's directions, moved an engine negligently, causing injury to plaintiff, a workman under his control. The master was deemed liable. His direction would have been given as a representative of the master (a master's duty), and the court said they could perceive "no logical or reasonable distinction between so 'directing the act and the doing of it himself,' in the circumstances here shown." They also held that the question of rank was not decisive of the case, and further say that the act fell within his authority as a representative of the master. The main ground of the master's liability was the foreman's failure to provide for plaintiff a reasonably safe place in which to work (a risk not assumed by the plaintiff). The Russ case[21] is very similar in principle. There a foreman's negligence caused injury to plaintiff. It was held that the master's duty was violated by the foreman, and the court says: "It was also his (foreman's) duty to look out for the safety of the men who were engaged in propelling the hand car; and if he saw fit and proper to assist the men, it was still none the less his duty to continue to care for their safety. Such a negligent act (as there complained of) cannot be separated from negligence in the performance of other delegated powers." While these two cases draw very fine distinctions, yet Missouri is directly in line with the current of authority. In the latter case, some confusion may appear from the following language: "The liability may arise from the negligent performance of some work done by the foreman or superintendent;" but it will be seen that this general statement is confined by illustrations following. We come now to

[12] Nall v. Railroad Co., 129 Ind. 264 (1891); Taylor v. Evans. & Terre Haute Ry. Co., 121 Ind. 124, 16 Am. St. Rep. 372.

[13] McElligott v. Randolph, 61 Conn. 157, 29 Am. St. Rep. 181.

[14] Hankins v. N. Y., L. E. & W. Ry. Co., 142 N. Y. 416, 25 L. R. A. 396; Flike v. B. & A. Ry. Co., 53 N. Y. 553, 13 Am. Rep. 545; Crispin v. Babbitt, 81 N. Y. 516, 37 Am. Rep. 521.

[15] Ross v. Walker, 139 Pa. St. 42, 23 Am. St. Rep. 160; Lewis v. Siefert, 116 Pa. St. 628, 2 Am. St. Rep. 631.

[16] Harrison v. Detroit, etc. Ry. Co., 79 Mich. 409, 7 L. R. A. 623.

[17] Ell v. Nor. Pac. Ry. Co., 1 N. Dak. 336, 12 L. R. A. 97; Lindvall v. Woods, 41 Minn. 212; McGovern v. Columbus Mfg. Co., 80 Ga. 227; Anderson v. Bennett, 16 Oreg. 515, 8 Am. St. Rep. 311; Moon v. Railway, 78 Va. 745, 49 Am. Rep. 401; Davis v. Railway, 55 Vt. 84, 45 Am. Rep. 593; H. & St. J. Ry. Co. v. Fox, 31 Kan. 596, 3 Pac. Rep. 320; Daves v. So. Pac. Ry. Co., 98 Cal. 19, 35 Am. St. Rep. 133; Moynihan v. Hills Co., 146 Mass. 586, 4 Am. St. Rep. 348; Madden v. Ches. & Ohio Ry. Co., 28 W. Va. 610, 57 Am. Rep. 695; C. & A. Ry. Co. v. May, 108 Ill. 288, 15 Am. & Eng. Ry. Cas. 320; Gunter v. Graniteville Mfg. Co., 18 S. Car. 263, 44 Am. Rep. 573; Frawley v. Sheldon, 38 Atl. Rep. (R. I.) 370; Wilson v. Charleston, etc. Ry. Co., 28 S. E. Rep. (S. Car.) 91.

[18] 11 Mo. App. 574.

[19] T. & P. Ry. Co. v. Reed, 88 Tex. 439, 31 S. W. Rep. 1058; Douglas v. T. M. Ry. Co., 63 Tex. 564 (1885); Nix v. T. & P. Ry. Co., 82 Tex. 473, 18 S. W. Rep. 571. But see Sweeney v. Railway Co., 84 Tex. 433, 19 S. W. Rep. 555, which seems to hold a directly contrary doctrine.

[20] 103 Mo. 574, 15 S. W. Rep. 554.

[21] Russ v. Wab. West. Ry. Co., 112 Mo. 45, 18 L. R. A. 823.

consider an Ohio case,[22] which is the leading case said to hold a contrary doctrine. Defendant was the owner and operator of a stone quarry; at the time of the accident plaintiff, the superintendent and other workmen were employed in loading stone upon cars by means of a derrick, tackle, hooks and chains. The hooks were employed in hoisting hard stone, as they would not with safety hoist soft stone, of which the superintendent and the defendant himself well knew. The superintendent negligently employed the hooks and assisted another workmen in attaching them to a soft stone. It is evident from the facts in the case that the negligent act consisted in the employment of the hooks instead of the chains, and not in the manner of affixing the hooks to the stone. While the stone was being elevated, the hooks drew or slipped out of the soft stone, which fell upon plaintiff's foot. It could not be said that the act causing the injury was the attachment of the hooks, for, I apprehend, no amount of care exercised in that regard would have rendered the operation any the less dangerous. Hence, the cause of the injury was the negligent employment of improper implements for the particular purpose. That the master had provided chains for such purpose would not relieve him, when his superintendent directs the application of hooks, for the imposed duty lying upon the master requires that he shall provide and employ proper implements and machinery for carrying out his work. That case held that a vice-principal who negligently "personally assists or interferes in the labor being performed under his direction and control, and injury befalls a servant, the master is liable." But this is obviously *obiter*, since the point was not decisive of the case. "The petition alleged negligence in the selection, use and employment of unsafe, insecure and dangerous implements and machinery" (a master's duty). "The mode or manner of attaching or fastening the hooks (a servant's duty) to the stone was not the subject of the complaint." The court further said: "If the act done by him (the vice-principal) had been done under his direction, as he did it, by one of the employees of the company," the master would be liable. That is, no distinction between the directing and the doing, as in the Missouri case.[23] The Kraft case is largely founded upon the Little Miami Ry. Co. v. Stevens,[24] in which, however, the injury was occasioned to the engineer by the master in not carefully providing for the safety of his employees. The company made a change in the schedule of trains, and changed the place of passing of two trains, but by the negligence of the conductor, the engineer was not notified of the change. The conductor fell asleep, and the engineer, ignorant of the change, did not stop at the appointed place of meeting, but went on and collided with the other train. The master was held liable. In C., M. & St. P. Ry. Co. v. Ross,[25] subsequently greatly modified in Railway v. Baugh,[26] the plaintiff was injured on account of the failure of the conductor to deliver to plaintiff, an engineer, the order he had received directing the movements of the trains. This was evidently the duty of the company to provide for plaintiff's safety. The case of Transfer No. 4, etc. v. N. Y., N. H. & H. Ry. Co.,[27] following the Ross case, and distinguishing the Quinn case,[28] says: "He (master of a ship) was exercising command, not simply assisting in the discharge of some minor duty entirely outside of a master's functions; and while thus in command, directing the steamer's movements, he so negligently directed them as to cause collision." Master held liable.

In conclusion, we may safely predict that every court, at this day, would hold that a vice-principal may hold a two-fold capacity; in some of his acts he may represent his master, in others he may act only as a common employee; and no court would hold a master responsible for the negligent acts of a vice-principal, which acts, being peculiar to the duties of a common workman, are done in that capacity.

SAMUEL H. CLAYTON.
Waco, Texas.

[22] Berea Stone Co. v. Kraft, 31 Ohio St. 287, 27 Am. Rep. 510.

[23] Dayharsh v. Railway, *supra*.
[24] 20 Ohio Rep. 415.
[25] 112 U. S. 377, 5 Sup. Ct. Rep. 184.
[26] 149 U. S. 368.
[27] 61 Fed. Rep. 364.
[28] Quinn v. N. J. Light. Co., 23 Fed. Rep. 363.

MARRIAGE—CONFLICT OF LAWS.

IN RE STULL'S ESTATE.

Supreme Court of Pennsylvania, January 3, 1898.

A marriage between citizens of Pennsylvania celebrated in Maryland, whether the parties went to evade the Pennsylvania law prohibiting marriage with the paramour, during the life of the injured wife or husband, by one guilty of adultery, is void in Pennsylvania, to which State the parties immediately returned, though there is no such prohibition in Maryland.

GREEN, J.: The question at issue in this case arises upon the application of a woman, claiming to have been the lawful wife of the decedent at the time of his death, to have letters of administration upon his estate granted to her. The letters were refused by the register and orphan's court, on the ground that the petitioner was not the lawful wife of the decedent, and hence was not entitled to them. Briefly, the facts were that the decedent, Richard H. Stull, was married to Hannah M. Lewis, who still survives. In February, 1894, the wife obtained a decree of absolute divorce from him, on the ground that he had committed adultery with one Ada Widdup. On April 5, 1894, the decedent and the said Ada Widdup, both being citizens and inhabitants of Pennsylvania, went to Cumberland, in the State of Maryland, and were united in marriage. They at once returned to Pennsylvania, and there lived and cohabited as man and wife on the farm of the decedent, in Washington county, until his death, on June 11, 1895. They had no children, but there was one child, a son, Samuel A. Stull, by the first marriage. It was admitted and found in the court below, and is now conceded on the argument in this court, that the decedent and Ada Widdup, his paramour, with whom he had committed adultery, went into Maryland, to be there married, for the express purpose of evading the law of Pennsylvania which prohibits a marriage with the paramour during the life of the injured wife or husband. It is also conceded that by the law of Maryland there is no such prohibition, and that under that law the marriage was lawful. The question arising is, was the applicant the lawful wife of the decedent at the time of his death? She subsequently married one Morehouse, and now bears his name.

Our act of March 13, 1815 (Purd. Dig. p. 688, pl. 29, § 91), provides as follows: "The wife or husband who shall have been guilty of the crime of adultery, shall not marry the person with whom the said crime was committed during the life of the former wife or husband; but nothing herein contained shall be construed to extend to or affect or render illegitimate any of the children born of the body of the wife during coverture." Section 10 disables a guilty wife, who after the divorce cohabits with her paramour, from alienating any of her lands and tenements, and avoids such conveyances if made. By the ninth section it will be perceived there is an absolute prohibition of any subsequent marriage between the guilty person and the paramour during the life of the former wife or husband. It forbids the marriage relation to be contracted in the most general terms. The guilty party "shall not marry the person with whom the said crime was committed." A personal incapacity to marry is imposed. The necessary meaning of this language is that they shall not marry at all, in any circumstances, or at any time, or any place, so long as the injured party is living. So far as the purpose and meaning of this statute are concerned, it is of no consequence where such subsequent prohibited marriage takes place. The relation itself is absolutely prohibited, and hence is within the operative words of the statute, without any reference as to where the marriage occurs.

It is now necessary to notice the other environments which affect the case. Both the parties to the prohibited marriage were citizens of Pennsylvania, domiciled on her territory, both before and after the marriage, and were only absent long enough to have the ceremony performed. They continued to reside together in Pennsylvania until the death of the husband. The woman resides here still. She never acquired any rights as an inhabitant of the State of Maryland, and can and does not now claim any right of that character. She is now claiming, not only the protection of our law, but a special privilege and right, accorded only to lawful wives under the intestate law of Pennsylvania, to-wit, the right to have administration of the estate of her alleged husband. In this respect the case is different from many of the cases cited in the paper books, and the difference is against her claim. Here, she, being now and at all times a citizen of Pennsylvania, subject at all times to its laws and its policies, having committed a direct and positive violation of one of those laws, which relates to and immediately affects the very application she now makes, solicits a decree from an orphans' court of Pennsylvania, giving her property rights and a right of administration, on the specific ground that she acquired those rights, if she acquired them at all, in consequence of a violation of the law of Pennsylvania; and she asks this decree, as she only can ask it, by the importation and actual enforcement of the law of a foreign State, within our own territory, and in our own judicature, when that law is contrary to the express terms of our own law, and contrary to the manifest and settled policy of our commonwealth. Moreover, it is expressly conceded that the parties left the territory of Pennsylvania, and entered that of Maryland, for the very purpose of evading the law of Pennsylvania which prohibited their marriage. We do not think that any of the cases cited for the appellant contain so many elements of invalidity as this.

There is no question as to the general rule that a marriage which is valid by the law of the place where it is solemnized is valid everywhere. Of

course, even this general rule has its exceptions, where the particular marriage is contrary to good morals or public policy, or to the positive statutes of the country where it is sought to be enforced. But where a man and woman, citizens of the same State, and subject to an absolute statutory prohibition against entering into a marriage contract which is against good morals and contrary to public policy, leave their domicile, and enter another, for the express purpose of violating the law of their domicile in this respect, the case is highly exceptional, and the great weight of authority is against the validity of such a marriage in the place of their domicile. There have been conflicting decisions upon the question, but very few of them sustain the validity of the relation where it has been assumed for an intended evasion of the law of the domicile and is contrary to good morals. The fact of such an intended evasion has been repeatedly recognized as the basis of invalidity when otherwise validity would have been declared. Thus, in a noted case in Tennessee (Pennegar v. State, 87 Tenn. 244, 10 S. W. Rep. 305), decided in 1889, the same question precisely as in this case was raised, to-wit, a marriage in Alabama between a man and woman domiciled in Tennessee, who had been guilty of adultery, and, after a divorce had been obtained in Tennessee on that ground, the guilty husband and his paramour went to Alabama, and were married, and at once returned to Tennessee. They were indicted in Tennessee for lewdness, and were convicted and sentenced, and appealed to the supreme court, claiming that the marriage, being lawful in Alabama, must be held lawful in Tennessee. In the latter State the statute prohibited such marriages in almost the very words of our own act of 1815, to-wit: "When a marriage is absolutely annulled, the parties shall be severally at liberty to marry again; but a defendant who has been guilty of adultery shall not marry the person with whom the crime was committed, during the life of the former husband or wife." In an elaborate opinion the supreme court sustained the sentence, and held the Alabama marriage to be void in Tennessee. In view of the close analogy of the case to the one we are considering, some citations from the opinion will be appropriate: "The marriage, being prohibited by statute, is void if solemnized in this State." "Does the rule that a marriage valid where solemnized is valid everywhere make the second marriage in Alabama in this case valid?" "Marriage is an institution recognized and governed to a large decree by international law prevailing in all countries, and constituting an essential element in all earthly society. The well-being of society, as it concerns the relation of the sexes, the legitimacy of offspring, and the disposition of property, alike demand that one State or nation shall recognize the validity of marriages had in other States or nations, according to the laws of the latter, unless some positive statute or pronounced public policy of the particular State demands otherwise." The opinion further holds that the rule that a marriage valid where solemnized is valid everywhere has its exceptions, to-wit: "(1) Marriages which are deemed contrary to the law of nature, as generally recognized in Christian countries; (2) marriages which the local law-making power has declared shall not be allowed any validity either in express terms or by necessary implication. * * * This [second] class may be subdivided into two classes: First. Where the statutory prohibition relates to form, ceremony, and qualification, it is held that compliance with the law of the place of marriage is sufficient, and its validity will be recognized, not only in other States generally, but in the State of domicile of the parties, even where they have left their own State to marry elsewhere for the purpose of avoiding the laws of their domicile. Second. Cases which, prohibited by statute, may or may not embody distinctive State policy as affecting the morals or good order of society. * * * Each State or nation has ultimately to determine for itself what statutory inhibitions are by it intended to be imperative, as indicative of the decided policy of the State concerning the morals and good order of society, to that degree which will render it proper to disregard the *jus gentium* of 'valid where solemnized, valid everywhere.' * * * If, as we have seen, the statutory inhibition relates to matters of form or ceremony, and in some respects to qualification of the parties, the courts would hold such valid here; but if the statutory prohibition is expressive of a decided State policy, as a matter of morals, the courts must adjudge the marriage void here, as *contra bonos mores*. * * * Now, believing, as we do, that the statute in question, which we are called upon to construe in the case at bar, is expressive of a decided State policy, not to permit the sensibilities of the injured and innocent husband or wife, who has been driven by the adultery of his or her consort to the necessity of obtaining a divorce, to be wounded, or the public decency to be affronted, by being forced to witness the continued cohabitation of the adulterous pair, even under the guise of a subsequent marriage performed in another State for the purpose of evading our statute, and believing that the moral sense of the community is shocked and outraged by such an exhibition, we will not allow such parties to shield themselves behind a general rule of the law of marriage, the wisdom and perpetuity of which depends as much upon the judicious exceptions thereto as upon the inherent right of the rule itself."

The foregoing reasoning is satisfactory to us. It invokes practically three distinct ideas, to-wit: (1) That the foreign marriage is contrary to the positive statute of the domicile; (2) that it is contrary to the public policy of the government of the domicile, in that it offends against the prevailing sense of good morals among the people there dwelling; and (3) it was contracted for the express purpose of evading the positive law

of the domicile, and is therefore to be regarded as a fraud upon the government and people of the domiciliary residence. The combination of these three objections seems to be most fatal to the validity of the marriage thus contracted. The writer is disposed to regard each one of them as fatal. Instances of invalidity from each source in other matters than foreign marriages are not at all uncommon, but it is not necessary to pursue them in the books, as it would involve unnecessary labor and space. There is abundant authority for their application in the marriage cases. Perhaps the most conspicuous case of the effect of mere statutory prohibition is the Sussex Peerage Case, 11 Clark & F. 85, which prohibited any marriage of any descendant of King George II. without the previous consent of the king. A marriage having been contracted at Rome between a son of George II. and a lady who was a British subject, without the royal consent, a question arose as to the validity of this marriage, which was submitted to the judges of the house of lords. Chief Justice Tindal, delivering the opinion, said: "The statute in question does not enact an incapacity to contract marriage within one particular country and district or another, but to contract matrimony generally and in the abstract. It is an incapacity attaching to the person of A B, which he carries with him wherever he goes. But, as a marriage once duly contracted in any country will be a valid marriage all the world over, the incapacity to contract a marriage at Rome is as clearly within the prohibitory words of the statute as the incapacity to contract in England." "The prohibitory words of the statute were general: 'That no one of the persons herein described shall be capable of contracting matrimony.'" "Here, again," said the chief justice, "the words employed are general or more properly universal, and cannot be satisfied in their plain, literal, ordinary meaning, unless they are held to extend to all marriages, in whatever part of the world they may have been contracted or celebrated. * * * It is certain that an act of the legislature will bind the subjects of this realm, both within the kingdom and without, if such was its intention." Lord Campbell said: "I have no doubt that it is competent to the British legislature to pass a law making invalid the marriage of particular British subjects all over the world; * * * and I am clearly of opinion that the intention is sufficiently testified by the language which has been employed." While the words used in this British statute related only to particular persons, they were specific in prohibiting any marriage between such persons, and for that reason it was held that the prohibition was general, and applied to any marriage, no matter where it was contracted. The same principle applies, as we have heretofore indicated, to the prohibition in the case at bar. It applies to any marriage, no matter where it may be celebrated, and as the parties were, and continued to be, citizens of Pennsylvania, it applied to them. In Brook v. Brook, 9 H. L. Cas. 212, another celebrated English case, where a man had married his deceased wife's sister, contrary to a British statute, the parties having gone to Denmark for that purpose, where such marriages were lawful, Lord Chancellor Campbell said: "It is quite obvious that no civilized State can allow its domiciled subjects or citizens, by making a temporary visit to a foreign country, to enter into a contract to be performed in the place of domicile, if the contrary is forbidden by the law of the place of domicile, as contrary to the law of religion or morality or any of its fundamental institutions." And, again: "If a marriage is absolutely forbidden in any country, as being contrary to public policy and leading to social evils, I think that the domiciled inhabitants of that country cannot be permitted, by passing the frontier, and entering another State, in which this marriage is not prohibited, to celebrate a marriage forbidden by their own State, and, immediately returning to their own State, to insist on their marriage being recognized as lawful." Upon the foregoing authorities, there is no doubt as to what the law is in England on this subject. It seems to us that these decisions are founded upon impregnable reasoning, which cannot be answered; and these decisions apply with the greatest force to the case in hand, for in those cases the statutes did not prohibit marriages involving immoral considerations, but here the subsequent marriage is a sort of reward for the prior adulterous intercourse, and the subsequent cohabitation is distinctly offensive to all good citizens. The conclusion of invalidity is immensely strengthened by considerations of the greatest force.

In North Carolina, in the case of Williams v. Oates, 27 N. C. 535, involving the same principle and almost the same facts, a similar decision was reached as in the Tennessee case, *supra*. A husband and wife domiciled in North Carolina were divorced for the wife's adultery. Afterwards the wife and a man (a third person), both also so domiciled, to evade the law of North Carolina, which prohibited her from marrying again, went into South Carolina, and were there married, according to the law of that State, and immediately returned to North Carolina, where they lived together as man and wife until the husband died, intestate. It was held that the second wife was not the lawful widow of the deceased, and was not entitled to an interest in his estate, the law of the domicile controlling the relation. In Marshall v. Marsball, 2 Hun, 238, decided in 1874, the facts were that the plaintiff, Marshall, in 1858, was divorced from his then wife, on the ground of his adultery. The parties to the divorce were then domiciled in New York. In 1866 the husband and another woman, both then residing in New York, went to Philadelphia, to be married there, intending to return immediately to New York. They were married in Philadelphia, the first wife still living, and returned to New York, as intended. It was held that the second marriage was absolutely void, on the ground that "if citizens leave

their own country, and contract a marriage abroad, such marriage being forbidden by the law of the country of their residence, but allowed by the country where it is contracted, and being celebrated with an intent to resume, and followed by an actual resumption of, their old residence, the validity of the contract is to be determined by the law of the domicile." It is true that this case was afterwards overruled in the case of Van Voorhis v. Brintnall, 86 N. Y. 18, decided in 1881; but, as neither of the decisions is binding upon us, we much prefer the ruling in Marshall v. Marshall. It is also true that in Inhabitants of Medway v. Inhabitants of Needham (1819), 16 Mass. 157, a contrary decision was made, in the case of a marriage between a mulatto and a white woman, which was solemnized in Rhode Island, where it was not unlawful. It was held valid in Massachusetts, where such marriages were prohibited although the parties were domiciled in Massachusetts, and immediately returned there. The marriage was not questioned because it was contrary to good morals, but only because it was contrary to the words of the Massachusetts statute. The decision, however, expressly excepted the case of incestuous marriages or others that "would tend to outrage the principles and feelings of all civilized nations," and hence is of scarcely any weight in the present contention. It was followed with reluctance in Putnam v. Putnam, 8 Pick. 433, but it was held to be doubtful of application in Inhabitants of West Cambridge v. Inhabitants of Lexington, 1 Pick. 506, if the husband had come into Massachusetts to claim any marital rights, "upon the ground that the marriage upon which he founded his claim was contracted in violation of the laws of this State, and that it was contrary to good policy, as well as detrimental to the public manners, that he should be allowed to enforce such claim."

It is proper to observe that the leading text-writers on the "Conflict of Laws" express the same conclusions as embodying the latest and best doctrine upon this subject. Thus, in Story, Confl. Laws, § 86, it is said: "But we are not therefore to conclude that every marriage by and between British subjects in foreign countries will be held valid because it is celebrated according to the laws of such countries. On the contrary, where the laws of England create a personal incapacity to contract marriage, that incapacity has in some cases been held to have a universal operation, so as to make a subsequent marriage in a foreign country a mere nullity when litigated in a British court." Section 87: "Indeed, the general principle adopted in England in regard to cases of this sort appears to be that the *lex loci contractus* shall be permitted to prevail, unless where it works some manifest injustice, or is *contra bonos mores*, or is repugnant to the settled principles and policy of its own laws." In section 112, quoting from Lord Robertson in Ferg. Mar. & Div. 397-399, it is said: "But a party who is domiciled here cannot be permitted to import into this country a law peculiar to his own case which is in opposition to those great and important public laws which our legislature has held to be essentially connected with the best interests of society." In a footnote to section 118, the author quotes from 1 Burge, Col. Laws, pp. 188-191, as follows: "The law which prohibits persons related to each other in a certain degree from intermarrying, and declares their intermarriage to be null, imposes on them a personal incapacity *quoad* that act; and that incapacity must continue to affect them as long as they retain their domicile in the country in which that law prevails. The resort to another country, where there was no such prohibitory law, for the mere purpose of evading the law of their own country, and with the intention of returning thither when their marriage had taken place, cannot be considered a change of their former domicile, or the acquisition of a domicile in the country to which they had resorted. They must therefore be regarded as still subject to the personal incapacity imposed by the law of their real domicile." In Whart. Confl. Laws, § 159, the writer says: "But when persons domiciled in a State where these prohibitions are in force are married without domicile, in violation of such prohibitions, in a State where there is no opposing legislation, the parties visiting the latter State for this purpose, will the former State recognize the validity of the marriage? The first point for the court of such a State to determine on such an issue is whether the prohibition of such marriages is part of the distinctive policy of the State. If so, the court, acting on the reasoning already given, must hold that persons domiciled in such State cannot evade its law by going to another State, and then returning to live in the home State in a union that State condemns. And so it has been ruled on several occasions,"—citing Kinney v. Com., 30 Grat. 858; Williams v. Oates, 27 N. C. 538; State v. Kennedy, 76 N. C. 251; Scott v. State, 39 Ga. 321; Dupre v. Boulard's Exr., 10 La. Ann. 411.

Upon the whole case, we consider that the weight of authority is against the validity of the marriage we are now considering; and, upon well-settled principles, we are convinced that it should not be sustained. The decree of the court below is affirmed, and the appeal is dismissed, at the cost of the appellant.

MCCOLLUM, MITCHELL, and FELL, JJ., dissenting.

NOTE.—In the recent case of Crawford v. State of Mississippi, 73 Miss. 172, 35 L. R. A. 244, 18 South. Rep. 848 (1895), it was held that the disobedience of a provision in a decree of divorce, prohibiting the offender under penalty from marrying again during the life of the former wife, will not make his subsequent marriage in another State with a woman who was ignorant of such provision void; but the marriage will be recognized for the protection of the innocent wife and her children. The statute of Alabama, under which the divorce was granted, provides that the chancellor before whom the divorce proceedings are pending "in making his decree in the cause shall, as the evidence and nature of the case may warrant, direct whether

the party against whom the decree of divorce is made be permitted to marry again," and does not in any other words make void a marriage entered into in defiance of such a decree. The marriage is not void by express act of positive law. The court in this case reasons that if there is a violation of the law, that the violator should criminally suffer the consequences of his act. But to hold the wife and offspring equally responsible would be not only cruel and unjust, but would be a departure from the humane spirit of the law which regards every marriage with favor and seeks to uphold the validity of every marriage, except when the same is made void under the law. The court recognizes the diversion of opinion when they say, "A long, protracted and thorough examination of all the authorities within our reach discloses much confusion on the subject, and much contrariety of opinion of the courts of last resort. It may be admitted that the volume of judicial determination is opposed to our view," and cite the case of Park v. Barron, 20 Ga. 702, 65 Am. Dec. 641, decided forty years before, and Mason v. Mason, 101 Ind. 25, thirty years later, as sustaining their view. The case of Ovitt v. Smith, 35 L. R. A. 223 (Vt. 1895), seems to be in accord with the principal case, and differs from the case of Crawford v. State, *supra*, in several important respects. The action was to annul the marriage, and that the party seeking redress was not the wrongdoer. In this case the statute did not contain an express clause of nullity. It merely provided that "it shall not be lawful for the petitionee in a divorce proceedings in which a divorce is granted, * * * to marry another person than the petitioner for three years from the time such divorce is granted, unless the petitioner dies within that time, in which case the petitioner may marry again." The court cites the case of Park v. Barrow, 20 Ga. 702, 65 Am. Dec. 641, and accounts for the conclusion of that case "that courts are unwilling to make decrees which may render innocent persons illegitimate." In this case there were no children, and the court proceeds to decide the case as the annulling of a contract made in opposition to an express statute, and cite Corn v. Lane, 113 Mass. 458, 18 Am. Rep. 509; Roby v. West, 4 N. H. 285, 17 Am. Dec. 423; Pray v. Burbank, 10 N. H. 377; Territt v. Bartlett, 21 Vt. 184; Bank v. Parsons, *Id.*; Aiken v. Blaisdell, 41 Vt. 655. It seems to me that whatever contrariety of opinion may exist that there ought to be no question that where no children are illegitimatized the non-offending party should, upon discovery of the true facts, be entitled to a decree annulling the marriage. The case of McCreery v. Davis, 28 L. R. A. 658, 44 S. Car. 195 (1895), is an extremely interesting one. Chas. W. McCreery was a resident of South Carolina, and married one Rhoda Baldwin of New York, and after such marriage continued to reside in South Carolina. After two years of married life Rhoda moved to Chicago, Ill., and after having resided some three years commenced an action for divorce upon the ground of extreme cruelty. The defendant was served by publication, and, therefore, a decree was granted severing the bonds of matrimony. By the law of South Carolina there is but one ground for divorce—adultery. In an able and exhaustive opinion the court holds—(1) The marriage relation is not a *res* within the State, in which only one of the parties reside, so as to give a court of that State jurisdiction to dissolve the marriage and bind the absent party who is a citizen of another jurisdiction, by substituted or actual notice of the proceedings given without jurisdiction of the court where the proceeding is pending. (2) Only valid decrees and not a void divorce in another State are referred to in statute, excepting a divorced person from the prohibitive of marriage by one who has a former husband or wife. (3) A void divorce granted to a wife in another State will not be given effect on the theory that she is estopped so as to relieve her husband's land in a suit between him and a third person, from her inchoate right of dower. This case is criticised in an editorial of the 41 Cent. L. J., p. 357, and if carried out, generally, would leave some queer results. In Dunham v. Dunham, 57 Ill. App. 474 (1894), 162 Ill. 589, 44 N. E. Rep. 841, 35 L. R. A. 70, a conclusion is reached hardly in harmony to that of McCreery v. Davis, above cited. It is here held that a decree of divorce obtained by the wife who separates from her husband for adequate cause and in good faith, removes to another State with the intention of permanently residing there, and becomes a *bona fide* resident there, is valid against the husband, who remains in the State of his residence and is served only by publication, without any appearance by him in the State in which the decree is rendered. See Malcolm v. Malcolm (Ky. 1896), 38 S. W. Rep. 141. In Conn v. Conn (Kan. App. 1896), 42 Pac. Rep. 1006, it was held that a marriage consummated between the plaintiff in a divorce suit and a third person sixteen days after the entry of the decree of divorce, but after the decree became final, was not void under Laws 1881, ch. 126, § 1, declaring it unlawful for either party to a divorce suit to marry until the expiration of six months from the entry of the decree; the court in this case holding, that a party violating such a law was criminally liable, but where the decree of divorce was once entered a marriage thereafter was valid, the statute in this case merely declaring it to be unlawful for the party to marry within six months. A different conclusion might have been arrived at if the statute would have declared the marriage illegal. Thus in Smith v. Fife (Wash.), 30 Pac. Rep. 1059, where the statute provides that the parties were incapable of contracting marriage within a certain time, it was held that a marriage within such time was void.

In State v. Walker, 36 Kan. 292, 13 Pac. Rep. 279, a distinction was recognized between a statutory prohibition and a declaration of incapacity to contract. Yet in the case of Ovitt v. Smith, above referred to, under a statutory prohibition a marriage was declared void—in Succession of Joseph Hernandez (1894), 46 La. 15 South. Rep. 461, 24 L. R. A. 831, as another important decision. Article 161, of the Revised Civil Code of Louisiana, provides as follows: "In case of divorce on the ground of adultery, the guilty party can never contract matrimony with his or her accomplice in adultery, under the penalty of nullity of the new marriage." It was here held that it must be shown by and in the decree of divorce that the divorce was granted by reason of adultery with a certain person, and it will not be a prohibition against a marriage with one with whom he committed adultery, but not so found in the decree. In this case it was held also that the prohibition of the statute of New York to the effect that no second marriage or other subsequent marriage shall be contracted by any person during the lifetime of any former husband or wife of such person, in case the former marriage be annulled or dissolved on the ground of adultery, has no extraterritorial effect, being a penal statute. As a general rule, I think it may be stated that although, as in the principal case, the parties go out of the State for the express purpose of evading the statute, as far as the same may affect the legitimation of their children, the marriage is valid. Moore v. Hegeman, 92 N. Car. 527; West Camb. v. Lexington, 1 Pick. 505, 11

Am. Dec. 231; Van Voorhis v. Brintnell, 86 N. Y. 18, 40 Am. Rep. 505. And likewise, where the guilty husband leaves the State for the purpose of evading the law, the innocent wife will not be affected in her dower in his property. Pondsford v. Johnson, 2 Blackf. 51; Putman v. Putman, 8 Pick. 433. In this last case, it seems as if the wife was cognizant of the fact when the marriage was solemnized. The case in *Re* Smith's Estate (Wash., 1892), 30 Pac. Rep. 1059, is somewhat similar to the principal case. Section 2008, of the Code of that State, provides that, after granting a divorce, "neither party shall be capable of contracting a marriage with a third person until the time for appeal has expired." Smith was married to Mrs. McFadden on October 17, 1888. On October 6, 1888, Smith's first wife secured a divorce from him, and on June 6, 1888, Mrs. McFadden had secured a divorce from her former husband. The time for appeal not having expired in either case when the second marriage took place, it was held that although there never was an appeal, and the parties cohabited as man and wife until Smith's death, yet the second marriage was illegal and void, and such second wife could not claim administration of his estate by virtue of being his widow. It is said that a marriage valid where made is valid everywhere, and as a general proposition this, no doubt, is true. And nothing shows how much we need a uniformity in marriage and divorce laws better than an examination of the various decisions of the different courts upon the effect of a marriage ceremony between parties under disability. In Ohio, where parties under the age of 18 and 21 cannot contract marriage, the common practice is to cross the Ohio river, and on the Kentucky shore, where marriage of a more tender age is permitted, have the ceremony performed and immediately return to their Ohio home. The express purpose is to violate or evade the Ohio law. Perhaps under the law as laid down in the principal case such a marriage is invalid. The difficulty about all such marriages is the injury that may be done society if they are declared illegal. When once married, whether the same be legal or illegal, the parties are not in the same position they were before. They can never be placed in the same position. Of course where it only effects certain rights that the law gives, like in the principal case, the right of the widow to administer upon the estate of her deceased husband, it can be held, without any injury to society, that the marriage is void. In such a case, the courts may well hold the marriage illegal. But when it would affect the *status* of the parties in the eyes of the law and society, bastardize their issue, and make criminal their cohabitation, a serious question arises. Then it comes to us that marriage is more than a civil contract. If the principal case is viewed only upon the exact question decided, to-wit, that where a marriage is entered into under the facts in the case stated, the wife cannot claim the benefit of the law which allows a widow the right to administer upon her husband's estate, a correct principle is announced; but if it is intended to broadly hold that all such marriages are illegal and void, it is certainly questionable. Upon kindred questions, see 33 Cent. L. J. 407-335, 28 Cent. L. J. 380, 20 Cent. L. J. 131, 17 Cent. L. J. 83, 13 Cent. L. J. 341 349.

WM. M. ROCKEL.

CORRESPONDENCE.

COERCION OF JURIES.

To the Editor of the Central Law Journal:

Your editorial on the subject of Imprisonment and Coercion of Juries, recalls a true incident that occurred in one of the inner "wild and wooly" counties of Wyoming in 1888. A criminal case was submitted to the jury. It was the first trial (according to law) ever held in that portion of the State. When elected, the sheriff had studied an old copy of Coke that was found in an abandoned military reservation near by, and he became fully impressed with the magnitude and dignity of his office. No verdict was in sight after the jury had been out all day, so the court took a recess until seven o'clock and again until ten o'clock at night. About midnight the judge was aroused from his slumber in the local hotel by the sheriff and magistrate to come forthwith to the court room. Surmising that a verdict had been reached he resumed his seat upon the bench. In a distant corner were the jurymen huddled together and two of the deputy sheriffs standing by with drawn revolvers. Dishevelled hair and angry countenances, betokened physical as well as mental struggle and tribulation on the part of the jurymen. "Mr. Clerk, poll the jury," commanded the court. "Say, judge," interposed the sheriff, with an air of injured dignity, "the jury hain't got no verdict yet. The d—— fools hain't sense enough to know their duty. They've been pickin' all day for suthin to eat and drink, and bin howlin' all night for a stove and a lamp. They busted the door of the jury room and tried to jump the town." Investigation disclosed the fact that the jury had been confined in a room about twelve feet square, and, after repeated demands for food and water and light, they broke down the door and escaped into the court room.

Cheyenne, Wyo. J. C. B.

BOOKS RECEIVED.

The War Revenue Law of 1898. Annotated by Edward L. Heydecker of the New York Bar, Author of Commentary on the Mechanic Lien Law. And Fulton McMahon, of the New York Bar. Albany, N. Y. Matthew Bender, 1898.

The Church and the Law with special reference to ecclesiastical law in the United States, by Humphrey J. Desmond, of the Wisconsin Bar, Chicago. Callaghan & Co., Law Book Publishers, 1898.

Hypnotism Explained, by Rev. Louis F. Schlathoelter, Pastor of Immaculate Conception Church, Moberly, Mo. Published by the author. Cum permissu Superiorum. Moberly, Missouri. Price $1. 1898. This is not a law book, but a lawyer may profit by reading it. He may learn through it how to influence or control the mind of jurors and judges. At all events, reading this little book may open up a new field of thought not unprofitable to a lawyer. Published by the author, Rev. Louis F. Schlathoelter, Moberly, Mo.

HUMORS OF THE LAW.

A Swede came into a lawyer's office one day and asked: "Is hare ben a lawyer's place?" "Yes; I'm a lawyer." "Well, Maister Lawyer, I tank I shall

have a paper made." "What kind of a paper do you want?" "Well, I tank I shall have a mortgage. You see, I buy me a piece of land from Nels Petersen, and I want a mortgage on it." "Oh, no. You don't want a mortgage; what you want is a deed." "No, maister; I tank I want mortgage. You see, I buy me two pieces of land before, and I got deed for dem, and 'nother faller come along with mortgage and take the land; so I tank I better get mortgage this time."—*Cincinnati Enquirer.*

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ADMINISTRATION—Executors—Recovering Counsel Fees.—Counsel fees of an executor in setting aside and revoking ancillary administration erroneously granted to defendant in another State cannot be recovered from such defendant where no malice on defendant's part is pleaded or proven; and even conceding that defendant had no right to apply for administration, and that his conduct was tortious, the fees are not recoverable.—DORRIS V. MILLER, Iowa, 75 N. W. Rep. 462.

2. ARBITRATION — Agreement to Submit. — Parties may bind themselves to submit to the judgment of an arbitrator as respects all questions arising out of their contractual obligations; and, if they do so, they may not afterwards avoid his jurisdiction by reason of an alleged mistake in judgment on his part.—MITCHELL V. DOUGHERTY, U. S. C. C., E. D. (Pa.), 86 Fed. Rep. 859.

3. ATTACHMENT—Defective Service.—Where a return of service of an attachment writ shows only substituted service, and does not show any effort to get personal service during several days thereafter when it was possible, the attachment is void.—FARR V. KILGOUR, Mich., 75 N. W. Rep. 457.

4. ATTACHMENT—Levy on Books of Account.—Code 1873, § 2967 (Code 1897, § 3894), provides that debts due a defendant are attached by garnishment thereof. Held, that a levy on books of account, without garnishment of the debtor, was not a sufficient attachment of the debts charged therein, and money collected under such a levy was not within the jurisdiction of the court.—CEDAR RAPIDS PUMP CO. V. MILLER, Iowa, 75 N. W. Rep. 504.

5. ATTACHMENT—Notice of Prior Lien.—Where an officer, prior to the levy of an attachment, is given such notice of a mortgage on the property as would have caused a person of ordinary prudence to make inquiries which would have disclosed a valid mortgage, he will be charged with notice, and the lien of the mortgage will be prior to that of the attachment.—GERMAN SAV. BANK V. ARMOUR PACKING CO., Iowa, 75 N. W. Rep. 503.

6. BANKS AND BANKING—Check—Signature of Drawer—The general rule that the drawee of a check, draft, or bill of exchange is held to know the signature of the drawer, and makes payment at his own peril, has not been modified in this State, except by local custom, as held in Ellis v. Trust Co., 4 Ohio St. 628.—FIRST NAT. BANK OF BELMONT V. FIRST NAT. BANK OF BARNESVILLE, Ohio, 50 N. E. Rep. 723.

7. BANKS AND BANKING—Loans to Cashiers—Trusts.—A cashier of a solvent bank, with the consent of the stockholders and directors, bought land, and borrowed money from the bank to pay the purchase price. Held, that as a cashier, in good faith, could borrow of the bank as any other person, no trust arose upon the land in favor of the bank.—BARTH V. KOETTING, Wis., 75 N. W. Rep. 395.

8. BENEFICIAL ASSOCIATIONS—Powers—Certificates.—Under Act March 16, 1897, § 1, relating to fraternal beneficiary associations, and requiring that they "shall" make provision for payment of benefits in case of death, and may in case of sickness, temporary or permanent physical disability, either as the result of disease, accident, or old age, "provided the period in life at which payment of physical disability benefits on account of old age commences, shall not be under 70 years," such association is not permitted to issue certificates which provide for the payment of benefits, regardless of disability, to all members who shall attain to 70 years, from which time their certificates shall become paid up, inasmuch as such is endowment insurance, and authority to do business under such act will not be given.—STATE V. OREAR, Mo., 45 S. W. Rep. 1081.

9. BENEVOLENT SOCIETY — Insurance—Beneficiaries.—The charter of a fraternal order provided for the payment of a sum of money, upon the death of a member, "to such person of his immediate family as the member should designate." A son, becoming a member, designated his father. He afterwards married, and died, leaving his wife and a child. Held, that the designation of the father being void, as he was not a member of the son's family, the money belonged to the wife and child.—KNIGHTS OF COLUMBUS V. ROWE, Conn., 40 Atl. Rep. 451.

10. BILLS AND NOTES — Bona Fide Purchasers. — A debtor sold his stock to a creditor, and in part payment took the creditor's individual notes, one of which he assigned in part payment of a debt due by him as guardian, and the other in liquidation of a

note he owed. The purchasing creditor knew of the assignment of the notes, and extinguished the one given in payment of the guardianship debt by giving a note direct to the assignee thereof. Held, that the assignees were *bona fide* holders.—POLLOCK V. SIMMONS, Miss., 23 South. Rep. 626.

11. BILLS AND NOTES—Parol Evidence.—In a suit on a note expressed to have been given for legal services rendered by the payee, the maker may show that the agreement was that the payee would attend to all her business in connection with an estate, and that a large amount of work remained to be done which he refused to do.—JONES V. RHEA, N. Car., 30 S. E. Rep. 346.

12. BILLS AND NOTES—Principal and Surety—Alteration of Note.—Where the principal in a note, after it was signed by the surety, and left with him to fill certain blanks, so altered the note before its delivery as to make it bear 8 instead of 6 per cent. interest, the alteration did not release the surety; the undertaking to pay more than 6 per cent. interest being void.—KEENE'S ADMR. V. MILLER, Ky., 45 S. W. Rep. 1041.

13. CARRIERS—Passenger — Contributory Negligence.—Where it was the custom—known and consented to by the railroad company—of passengers to alight, at a place other than the depot, on the side of the train where the company operated a parallel track, the mere act of a passenger alighting on such side was not, as matter of law, negligence, but the question is solely for the jury to determine.—PENNSYLVANIA CO. V. MCCAFFREY, Ill., 50 N. E. Rep. 713.

14. CARRIERS OF GOODS—Breach of Contract—Interstate Commerce Law.—Where the agent of a connecting carrier, by mistake, has given to a shipper an unusually low rate on a shipment of a special and unusual character, and the initial carrier, without knowledge of such rate, breaks its contract of carriage by sending the goods over a different road from that prescribed in the bills of lading, so that the shipper is compelled to pay a much higher rate of freight, the initial carrier cannot escape liability for damages on the ground that the rate given was in violation of the interstate commerce law.—POND-DECKER LUMBER CO. V. SPENCER, U. S. C. C. of App., Fifth Circuit, 86 Fed. Rep. 846.

15. CHATTEL MORTGAGE—Loss of Lien—Attachment.—Cattle alleged to belong to S were attached in the hands of a third person, and a mortgagee intervened, claiming ownership. It appeared that his chattel mortgage had matured nine months before the levy, and the mortgagee had permitted S to retain possession of the cattle. Held, that the mortgagee could not claim a lien as against the attaching creditor.—SHANNON V. WOLF, Ill., 50 N. E. Rep. 682.

16. CHATTEL MORTGAGE—Mortgage by Vendee.—One in possession of chattel property under a contract of conditional sale, who has paid a part of the purchase money, has acquired an interest in the property, which may be mortgaged.—ALBRIGHT V. MEREDITH, Ohio, 50 N. E. Rep. 719.

17. CONFLICT OF LAWS—Contracts Relating to Remedy.—A note made and payable in Iowa provided that, if suit should be commenced thereon, a reasonable sum should be allowed as attorney's fees, to be taxed with the costs. Held, that this was a provision relating to the remedy, and not a substantive part of the contract, and, although lawful in Iowa, being contrary to the law of Nebraska, will not be enforced here.—HALLAM V. TELLEREN, Neb., 75 N. W. Rep. 560.

18. CONSTITUTIONAL LAW—Change of Officer's Salary During Term.—The constitution of 1891 increased the number of judges of the court of appeals, and in effect created a new court after the year 1894, providing, by section 112, that the judges should "receive for their services an adequate compensation, to be fixed by law," and, by section 115, that the judges then in office should continue in office until the expiration of their terms. Held, that Act March 6, 1894, fixing the salary of each judge at $5,000 per annum, did not violate section 235 of the constitution, providing that "the salaries of public officers shall not be changed during the term for which they were elected," though the effect was to increase the salary of the judges elected under the old constitution, as well as that of a judge who had theretofore been elected under the new constitution, and who, in default of action by the legislature, had been drawing the salary of $4,000 fixed by the law in force when the constitution was adopted, as the act "fixed" a salary, and did not change one already fixed.—STONE V. PRYOR, Ky., 45 S. W. Rep. 1053.

19. CONSTITUTIONAL LAW—Trial by Jury.—Const. U. S. Amend. 7, providing that, "in suits at common law when the value in controversy exceeds $20, the right of trial by a jury shall be preserved," does not refer to suits in chancery courts.—KEITH V. HENKLEMAN, Ill., 50 N. E. Rep. 692.

20. CONSPIRACY—Measure of Damages.—Where one is driven out of business by a conspiracy in restraint of trade, the measure of damages is the loss sustained in his business, and the consequent diminished value of his business property, and not the loss sustained by being forced to sell his tools and implements at less than their value.—BRATT V. SWIFT, Wis., 75 N. W. Rep 411.

21. CONTRACTS — Conditions Precedent.—A contract provided that, on failure of the contractor to do any of the work required, the other party should, upon the architect's certificate of such neglect, be at liberty to terminate the employment and complete the work himself; his expenses to be audited by the architect, whose certificate should be conclusive. Held, that an action for a breach of the contract, and for expenses incurred for labor and materials furnished thereunder, could not be maintained without the architect's certificate, unless sufficient excuse for failure to present the same be shown.—INTERNATIONAL CEMENT CO. V. BEIFIELD, Ill., 50 N. E. Rep. 716.

22. CONTRACT—Mortgages — Delivery.—Under a contract between a debtor and creditors collateral to the execution of mortgages to secure their claims, mortgages, except to one of the creditors, were delivered at the time, and an agent of the mortgagees appointed to take possession. By a condition of the contract, ratification of the contract, by the other creditor was to be optional. Held that, all the creditors having signed the contract, the minds of the parties met in the delivery of the mortgages.—GROETZINGER V. WYMAN, Iowa, 75 N. W. Rep. 512.

23. CONTRACT—Partnership Relations.—Where two men are partners, and one is indebted to the other on co-partnership transactions, the creditor has no lien, because of such partnership relation, upon his debtor' individual property.—MURPHY V. WARREN, Neb., 75 N. W. Rep. 573.

24. CONTRACT—Waiver of Terms—Assumpsit.—Under a contract to furnish heating apparatus, the contractor may waive a provision that the title to the property should not pass until the price was fully paid, and recover the amount due thereon under the common counts.—SHEPARD V. MILLS, Ill., 50 N. E. Rep. 709.

25. CORPORATIONS — Assignment for Benefit of Creditors—Ratification.—An assignment of the corporation property by part of the directors, acting as individuals, and therefore invalid, cannot be ratified by individual acquiescence of the remaining directors, but only by an act done in their capacity as the board of directors.—CULUMET PAPER CO. V. HASKELL SHOW-PRINTING CO., Mo., 45 S. W. Rep. 1115.

26. CORPORATION—Insolvent Corporation—Preferring Creditors.—A corporation resolved to remove its stock of merchandise to a distant city, and effect a consolidation there with another corporation. Afterwards its managing officers determined, in order to avoid trouble with creditors, to retain a portion of the goods, sell them, and apply the proceeds to the payment of debts. No trust was created, and no provisions made for the manner of the application of the proceeds. Held, that

this arrangement did not constitute the goods a trust fund for the payment of creditors *pro rata*.—GERMAN NAT. BANK v. FIRST NAT. BANK, Neb., 75 N. W. Rep. 531.

27. CORPORATIONS — Liability — Secretary of Promoters.—A corporation cannot be held liable for the services of a director, as secretary for its promoters, with the expectation that the corporation would pay him.—WEST POINT TELEPHONE & TELEGRAPH CO. v. ROSE, Miss., 23 South. Rep. 629.

28. COUNTIES—County Board — Allowance of Claims.—An order of a county board allowing or rejecting claims against the county has the force and effect of a judgment, and is conclusive, unless vacated or reversed on appeal.—TAYLOR v. DAVEY, Neb., 75 N. W. Rep. 553.

29. COUNTIES—Support of Insane—Liability of Estate.—Where a county, through the neglect of the guardian, has been compelled to provide for the support of a lunatic not a pauper, it is entitled to be indemnified out of the ward's funds.—MCNAIRY COUNTY v. MCCOIN, Tenn., 45 S. W. Rep. 1070.

30. COVENANTS OF WARRANTY — Assignment.—Under the laws of this State, unless the covenant expressly negatives such transmission, a covenant of warranty of title, of quiet enjoyment, and of freedom from incumbrances, made by any grantor, passes with the land to subsequent purchasers.—TUCKER v. MCARTHUR, Ga., 30 S. E. Rep. 283.

31. CRIMINAL EVIDENCE—Conspiracy.—Where no conspiracy to murder embracing defendant was shown from the antecedent acts and declarations of parties with whom it is claimed he conspired, nor by the circumstances of the homicide, evidence of the acts and declarations should not be admitted except when the defendant was present and participated.—RHODES v. STATE, Tex., 45 S. W. Rep. 1009.

32. CRIMINAL EVIDENCE—Forgery—Other Offenses.—Evidence tending to show that one tried for forging a check had, a few days previous to the forgery in question, forged another check, is admissible to show the intent with which the act charged was done.—STATE v. HODGES, Mo., 45 S. W. Rep. 1093.

33. CRIMINAL EVIDENCE—Homicide—Character.—The testimony of the dangerous character of the deceased, when admissible in support of self-defense urged by the accused, must be restricted to the general reputation of the deceased for peace and quietness; hence testimony of particular acts of violence of the deceased are properly excluded.—STATE v. FONTENOT, La., 23 South. Rep. 634.

34. CRIMINAL LAW—Plea—Former Acquittal.—Where the allegations of a plea in bar, liberally and fairly construed, substantially state that the prisoner has before, by a court having jurisdiction, had a judgment of acquittal, the truth of the averments of the plea must be determined by a jury.—BUSH v. STATE, Neb., 75 N. W. Rep. 542.

35. CRIMINAL LAW—Rape — Witness.—Under 3 How. Ann. St. §7546, providing that a wife is incompetent to testify as a witness against her husband except where the cause of action grew out of the personal wrong done by one to the other, a wife cannot testify without his consent concerning an alleged rape committed by the husband upon her before marriage, where the marriage was not induced by the crime.—PEOPLE v. SCHOONMAKER, Mich., 75 N. W. Rep. 439.

36. CRIMINAL PRACTICE—Burglary—Indictment.—Under Code Cr. Proc. art. 445, providing that, where property is owned in common or jointly by two or more persons, ownership may be alleged in all or either of them, an indictment for burglary charging ownership of the house and goods in one person is sustained by proof that he and another jointly occupied the house and owned the goods, though the fee of the house be in another.—TIDWELL v. STATE, Tex., 45 S. W. Rep. 1015.

37. CRIMINAL PRACTICE — Forgery — Indictment.—Although Rev. St. 1889, § 2963, provides that it is unnecessary, in an indictment where an intent to defraud is necessary to constitute the offense to allege the particular person so defrauded, yet, in a prosecution for uttering a forged instrument, where the indictment alleges the name of a person said to have been defrauded, the proof must conform to the allegation.—STATE v. SAMUELS, Mo., 45 S. W. Rep. 1088.

38. CRIMINAL PRACTICE—Indictment and Information.—The word "did" is essential in complaints, informations, and indictments, where the acts which constitute the offense are being set out or charged.—BARFIELD v. STATE, Tex., 45 S. W. Rep. 1015.

39. DEBTOR AND CREDITOR — Conspiracy to Defraud Creditor.—A general creditor cannot recover damages in an action on the case against his debtor, who bought goods of him, on 60 days' credit, at a time when the latter was perfectly solvent, without any fraud, and against other defendants, with whom he subsequently conspired to confess judgments on fictitious notes, and thereby placed all his property beyond the reach of such creditor.—FIELD v. SIEGEL, Wis., 75 N. W. Rep. 397.

40. DEEDS—Sufficiency of Description.—Under a contract to exchange land, in which the parties thereto agreed to furnish each other with full warranty deeds, a deed which describes the property conveyed by metes and bounds, without reference to any known government survey, and which fails to state the county and State in which the land is situated, is insufficient.—PFAFF v. CILSDORF, Ill., 50 N. E. Rep. 670.

41. DEED—Testamentary Deed—Revocation.—A deed to a trustee providing for payment to the maker for life of all the income, payments of interest and principal to others not to be till after her death, is testamentary in character, and can be revoked, though containing no provision therefor.—CHESTNUT ST. NAT. BANK v. FIDELITY INSURANCE, TRUST & SAFE-DEPOSIT CO., Pa., 40 Atl. Rep. 486.

42. DIVORCE—Attorney's Fees. — An order directing payment by a husband for services already performed by his wife's counsel in a divorce suit is not authorized by Rev. St. ch. 40, § 15, which provides for payment to "enable her to maintain or defend the suit."—ANDERSON v. STEGER, Ill., 50 N. E. Rep. 665.

43. DIVORCE—Decree for Alimony—Enforcement.—In this State a decree awarding permanent alimony is enforceable in the same manner as judgments at law.—LEEDER v. STATE, Neb., 75 N. W. Rep. 541.

44. DIVORCE—Service—Decree. — A husband, being a domiciled resident of Utah, brought suit in a court of that territory against his wife, residing in New Jersey, for divorce, on the ground of desertion, and served her personally in New Jersey with a copy of his complaint and summons. She made no appearance or defense, and, after more than two months from such service, default was entered against her; and, upon proofs produced to the court, a decree of divorce was granted. Held a defense to a suit by the wife against the husband for divorce in this State.—FELT v. FELT, N. J., 40 Atl. Rep. 436.

45. EASEMENT—Way.—A grantee of a road or way of a definite width, without restrictions, can use the entire specified width, and is not confined to a road or path of a necessary or convenient width even.—ROTCH v. LIVINGSTON, Me., 40 Atl. Rep. 426.

46. ELECTION OF REMEDIES—Sale — Fraudulent Purchase.—A creditor suing to recover for goods fraudulently purchased from him, and concealed, may, upon learning their location and identity, abandon the action to recover on the debt, and rescind the sale, reclaiming the goods, if he had neither knowledge of nor means of ascertaining such fact at the time he instituted the action to recover on the debt.—WHITE v. BEAL & FLETCHER GROCER CO., Ark., 45 S. W. Rep. 1060.

47. EQUITABLE ASSIGNMENT — What Constitutes.—R deposited with F certain notes for safe-keeping, and was subsequently murdered. R's mother and sole heir

then wrote to F to "take the case in your hands, and do the best you can for me, and pay yourself out of the money you have in your own hands." Held, that the letter did not constitute an equitable assignment of any sum *pro tanto*, but was simply an agreement that F should be paid out of moneys on hand.—FOSS v. COBLER, Iowa, 75 N. W. Rep. 516.

48. EVIDENCE—Declarations—Contract of Agent.—A subsequent declaration of an agent is inadmissible to prove a contract made by him.—MAXSON v. MICHIGAN CENT. R. Co., Mich., 75 N. W. Rep. 459.

49. EXECUTION—Setting Aside Sale.—Execution sale to the judgment creditor will not be set aside on the ground of fraud merely because a sum collected from collateral after rendition of judgment, but before the sale, was not credited on the execution; the judgment creditor not knowing of the collection, which was made by one who was attorney for him and the judgment debtor, and who claimed the money for services rendered the judgment debtor.—MOORE v. JENKS, Ill., 50 N. E. Rep. 698.

50. FALSE REPRESENTATIONS—Expression of Opinion.—A statement of a seller of an interest in property to be transferred to a fishing company, which it was agreed as a part of the contract of sale should be formed by the parties, of the number of pounds of fish that could be taken by the new company in a season, was not a representation, but merely an expression of opinion, upon which the purchaser had no right to rely.—HANSEN v. BALTIMORE PACKING & COLD-STORAGE CO., U. S. C. C., D. (Minn.), 86 Fed. Rep. 832.

51. FEDERAL COURTS—Jurisdiction—Diverse Citizenship.—The citizenship which determines the jurisdiction of a federal court is that which existed at the time of commencement of the suit, and subsequent changes can neither devest nor confer jurisdiction.—TUG RIVER COAL & SALT CO. v. BRIGEL, U. S. C. C. of App., Sixth Circuit, 86 Fed. Rep. 818.

52. FRAUDULENT CONVEYANCES—Husband and Wife.—Where an insolvent husband, who has used money of the wife under a promise to repay her, conveys land to her, in compliance with that promise, under the belief that he is solvent, the conveyance is not actually fraudulent.—POYNTER v. MALLORY, Ky., 45 S. W. Rep. 1042.

53. FRAUDULENT CONVEYANCES—Liability of Grantee.—A debtor conveyed property to defraud creditors, receiving its value in cash and notes. The grantee, at the debtor's request, mortgaged the property, and used the money in paying a *bona fide* debt of the debtor, who credited the grantee's notes with the amount. Held, that the grantee would be relieved from claims of other creditors, to the extent of such payment.—SPRAGUE v. RYAN, S. Dak., 75 N. W. Rep. 390.

54. FRAUDULENT CONVEYANCE — Parol Antenuptial Agreement.—Deed of settlement of land by husband on wife, otherwise void at time of execution, as against creditors, cannot be sustained by antenuptial parol agreement.—FLORY v. HOUCK, Pa., 40 Atl. Rep. 482.

55. GAME LAWS—Enforcement against Indians.—The plaintiff is an Indian, and a licensed trader on White Earth reservation. She purchased on the reservation a quantity of game killed thereon by tribal Indians, and transported it by wagon off the reservation to the nearest railway station, and there delivered it to a carrier, to be shipped out of the State. It was seized and confiscated while in possession of the carrier by the defendants, acting as game warden and game and fish commissioners of the State. Held, that the defendants' acts were legal. — SELKIRK v. STEVENS, Minn., 75 N. W. Rep. 286.

56. GUARANTY—Consideration. — Defendant signed a guaranty for a firm upon their representation that plaintiffs would thereupon execute an agreement extending credit to the firm. Held, that the execution of the agreement by plaintiffs was a sufficient consideration to uphold the guaranty.—LENNOX v. MURPHY, Mass., 50 N. E. Rep. 644.

57. HABEAS CORPUS — State and Federal Courts.—While the circuit courts have power to grant writs of *habeas corpus* to inquire into the cause of the restraint of liberty of any person under authority of a State, in violation of the constitution, laws, or treaties of the United States, they should not, except in cases of peculiar urgency, exercise that power, but should leave such person to pursue his remedy by writ of error to the federal supreme court, after final determination of his case in the State courts.—TINSLEY v. ANDERSON, U. S. S. C., 18 S. C. Rep. 806.

58. HOMESTEAD—Partition among Heirs.—Where the right of a widow to the homestead of a solvent decedent terminated on the closing up of his estate, under a law then in force, the rights of the heirs are not affected by Const. 1876, art. 16, § 52, subsequently adopted, providing that a homestead shall not be partitioned among the heirs during the lifetime of the surviving spouse.—CLEMONS v. CLEMONS, Tex., 45 S. W. Rep. 996.

59. HUSBAND AND WIFE — Contracts. — Code 1873, § 2203, providing that, when property is owned by either the husband or wife, the other has no interest therein which can be the subject of contract between them, applies to both personal and real property, so that an agreement by the husband, relinquishing all claim to the separate personal property of his wife, is of no effect.—POOLE v. BURNHAM, Iowa, 75 N. W. Rep. 474.

60. HUSBAND AND WIFE—Dower Rights—Lands Taken by Eminent Domain. — A wife's inchoate right of dower is not such an interest in lands as to entitle her to have such interest provided for out of the proceeds of her husband's lands taken by the right of eminent domain during the life of the husband.—FLYNN v. FLYNN, Mass., 50 N. E. Rep. 650.

61. HUSBAND AND WIFE—Fraud against Wife—Rights of Husband.—Right to damages, if any, which a husband has by reason of his wife, who has title to the homestead, being induced by fraud to part with it, can be enforced only in an action with her.—DEVEREAUX v. HUBBARD, Mich., 75 N. W. Rep. 450.

62. INJUNCTION—Jurisdiction.—Courts will not grant an injunction to stay proceedings in another court having the same power to grant relief.—ROBINSON v. KUNKLEMAN, Mich., 75 N. W. Rep. 451.

63. INTOXICATING LIQUORS — City Ordinances—Validity.—A municipal corporation cannot, in the absence of express legislative authority so to do, enact a valid ordinance for the punishment of an act which constitutes an offense against a penal statute of this State. Such authority cannot be inferred from the "general welfare clause," usually found in municipal charters.—MORAN v. CITY OF ATLANTA, Ga., 30 S. E. Rep. 298.

64. INTOXICATING LIQUORS—License.—Under Sanb. & B. Ann. St. §§ 1548, 1549, providing that town boards may grant licenses to sell intoxicating liquors on application in writing and proof of payment of the sum required, a license to sell intoxicating liquors is not transferable, and the town board has no authority to consent to such transfer.—STATE v. BAYNE, Wis., 75 N. W. Rep. 405.

65. JUDGMENT — Stay of Proceedings.—Under Cir. Ct. Rule 47, providing for a stay of proceedings after judgment, and permitting the granting of a further stay, not exceeding 60 days, on good cause shown after notice, a stay may be granted after the expiration of 60 days from entry of judgment.—ROACH v. LILLIBRIDGE, Mich., 75 N. W. Rep. 465.

66. JUDICIAL SALE—Notice of Easement.—A purchaser at judicial sale is conclusively presumed to know of the open possession by a railroad of an easement consisting of a right of way across the land at the time of the sale, and of the extent thereof.—EX PARTE ALEXANDER, N. Car., 30 S. E. Rep. 836.

67. LIFE INSURANCE—Change of Beneficiaries—Vested Rights.—A beneficiary of an insurance policy has no

vested interest in the policy prior to the insured's death, even though he pay the dues on the policy, with the expectation of sharing in the benefits.—MASONIC MUT. BEN. ASSN. v. TOLLES, Conn., 40 Atl. Rep. 448.

68. LIFE INSURANCE—Contract—Delivery of Policy.—The receipt by an agent from his insurance company of a policy to be unconditionally delivered by him to the applicant is, in law, tantamount to a delivery to the insured, although the agent never parts with possession of the policy, and although its delivery to the applicant is, by contract, made essential to its validity.—NEW YORK LIFE INS. CO. v. BABCOCK, Ga., 30 S. E. Rep. 273.

69. LIFE INSURANCE — Payment of Premium.—A condition of a life insurance policy making non-receipt by the insurer of any payment by the insured, therein required, for 30 days after the same shall become due, conclusive evidence of an abandonment by the latter of his policy,—it providing for certain assessments and charges to be paid on call and notice, in addition to the regular premiums,—does not control, and open for disproof by parol evidence, a recital in the body of the policy acknowledging receipt of the premiums by the insurer, but refers to such additional assessments.—DOBYNS V. BAY STATE BEN. ASSN. OF WESTFIELD, MASS., Mo., 45 S. W. Rep. 1107.

70. LIMITATIONS — Foreign Corporations.—Under Shannon's Code, § 4455, providing that, if the person against whom an action accrues resides out of the State, the time of such residence shall not be taken as part of the time limited for the commencement of the action, a foreign corporation, who has offices and agents within the State upon whom process might be continually served, is not estopped from pleading the bar of the statute to an action against it.—TURCOTT V. YAZOO & M. V. R. CO., Tenn., 45 S. W. Rep. 1067.

71. LIMITATION OF ACTIONS — Non-residence.—Code 1892, § 2748, which provides that, if a person against whom a cause of action has accrued in Mississippi be absent from and reside out of the State, the time of his absence shall not be taken as any part of the time limited for the commencement of the action after his return, applies to one who has never resided in the State.—ROBINSON V. MOORE, Miss., 23 South. Rep. 631.

72. MANDAMUS — Requirements of Writ.—In the performance of a writ of mandate, the defendant cannot be left to outside ascertainment, nor be required to look *dehors* the language of the writ, to determine its directions, but is restricted to the mandatory clause alone, to ascertain what act it requires him to perform.—SEARS V. KINCAID, Oreg., 53 Pac. Rep. 303.

73. MARRIED WOMAN — Action against Husband.—Under Gen. Laws, ch. 194, § 16, enacting that "in all actions, suits and proceedings, whether at law or in equity, by or against a married woman, she shall sue and be sued alone," and in view of the policy of the statute to give married women free and entire control of their own property, the same as *feme sole*, a wife may maintain trover against her husband for the conversion of her household furniture.—SMITH V. SMITH, R. I., 40 Atl. Rep. 417.

74. MARRIED WOMAN — Judgment.—The defense of a married woman, sued jointly with her husband on a note and mortgage made by them, that she signed for the purpose of relinquishing her dower only, is not sufficient to prevent the recovery of a personal judgment against her.—WOOD V. DUNHAM, Iowa, 75 N. W. Rep. 507.

75. MASTER AND SERVANT—Assumption of Risks.—Where a train separated by reason of a defective drawbar, and, by failure of the engineer to move fast enough, the rear collided with the forward part, resulting in an injury to a brakeman, the company is not relieved from liability because of the engineer's concurring negligence.—CHICAGO, ETC. R. CO. V. GILLISON, Ill., 50 N. E. Rep. 657.

76. MASTER AND SERVANT — Fellow-servants.—Plaintiff and F were lifting a barrel of salt from a wagon before the door of defendant's factory. The barrel slipped, and plaintiff was injured. Plaintiff was a common laborer, and F was a foreman in the factory, but his duties did not require him to assist in unloading barrels. Held, that they were fellow-servants.—GALL V. BECKSTEIN, Ill., 50 N. E. Rep. 711.

77. MECHANICS' LIENS — Filing Statement.—As between the parties to the contract, the filing of a statement for a mechanic's lien is not necessary to create a lien.—HOPPES V. BAIE, Iowa, 75 N. W. Rep. 495.

78. MORTGAGE — Bona Fide Purchaser—Notice.—A debtor mortgaged his farm, and shortly afterwards defendant commenced an action, and bought it in at execution sale. The mortgage was recorded, but by a misdescription located the land in range 30, instead of 36, the correct number. Defendant, before sale, was told that the bank which plaintiff represents had a mortgage on debtor's farm in A county. There was no range 30 in A county, and debtor had only the one farm in such county. Held sufficient to put the purchaser on inquiry, and charge him with notice that the mortgage was senior to his lien.—FRY V. WARFIELD-HOWELL-WATT CO., Iowa, 75 N. W. Rep. 485.

79. MORTGAGE—Validity—Future Advances.—A mortgage to cover future advances is valid.—CITIZENS' SAV. BANK V. KOCK, Mich., 75 N. W. Rep. 458.

80. MORTGAGES—Material Furnished—Exemptions.—A dynamo used in an electric light and power plant of a company is not "material," within the meaning of Code, § 1255, providing that mortgages upon the property of a corporation shall not exempt its property from an execution for material furnished the corporation.—GEN. ELEC. CO. V. MORGANTON ELEC. LIGHT & POWER CO., N. Car., 30 S. E. Rep. 314.

81. MORTGAGE—Rights of Parties.—A mortgagee is entitled to proceed, upon non-payment as provided, against the makers of the notes, by action at law, or he may take judgment by confession, where so provided in the contract, or proceed directly against the mortgaged property; and his rights cannot be affected by sale of the property to a third person, who assumes the mortgage debt, of which he had no knowledge, and to which he does not consent, except that by such assumption he acquires an additional remedy against the vendee.—HAZLE V. BONDY, Ill., 50 N. E. Rep. 671.

82. MORTGAGE—Validity—Deposit of Title Deeds.—A mortgage by the deposit of title deeds, without writing, is not effective in this State. While such a mortgage is recognized in England, and while the law of England has been adopted by statute in this State, the statute does not extend to those rules of the English law which contravene the object and purpose of our own statutes.—BLOOMFIELD STATE BANK V. MILLER, Neb., 75 N. W. Rep. 569.

83. MORTGAGE FORECLOSURE—Deficiency Judgment.—A defendant, against whom judgment on mortgage foreclosure was taken by default upon personal service, cannot, upon appeal, take advantage of any defect in the complaint, where it was sufficient to apprise defendant of its liability.—RICHARDS V. LAND & RIVER IMP. CO., Wis., 75 N. W. Rep. 401.

84. MUNICIPAL CORPORATIONS—Monopoly.—A grant of the exclusive use of the streets, alleys, sidewalks, public grounds, streams and bridges of a town for the exclusive privilege of constructing and maintaining waterworks within its corporate limits violates Const. art. 1, § 31, declaring that "perpetuities and monopolies are contrary to the genius of a free State and ought not to be allowed."—THRIFT V. BOARD OF COMMRS. OF TOWN OF ELIZABETH CITY, N. Car., 30 S. E. Rep. 349.

85. MUNICIPAL CORPORATIONS — Contracts — Waterworks.—The principal consideration for the sale of waterworks to a city was the acceptance of the plant, and an agreement to connect it with the general system operated by the city, and to maintain it. The only additional consideration was a provision for such possible further recompense as might be agreed on by an arbitration of the mayor, chairman of the finance committee, and president of the board of public works of

the city, whose action should be conclusive when approved by the council. Held that, the seller not having demanded arbitration with reference to further compensation before the time stipulated in the contract expired, an action for the value of the plant could not be maintained.—LIDGERWOOD PARK WATERWORKS CO. v. CITY OF SPOKANE, Wash., 53 Pac. Rep. 352.

86. NEW TRIAL—Surprise.—Where, three months after the entry of judgment, a motion is made for a new trial on the ground of surprise at the testimony of a witness, and that the only person conversant with the facts sworn to by such witness was out of the State at the time of the trial, and an affidavit of such absent person is presented contradicting the testimony of the witness, and it appears that some of the material statements in such affidavit are in contradiction to his deposition taken in another cause concerning the same transaction, the motion will be denied.—UNITED STATES v. FIRST NAT. BANK OF BELLAIRE, U. S. C. C., S. D. (Ohio), 86 Fed. Rep. 861.

87. OFFICE AND OFFICERS—Following Trust Funds—City Treasurer.—When entering on his second term, a city treasurer, in his settlement, charged himself with a certain sum. On his death, three months later, the amount of his shortage was ascertained by adding to this balance the sums he afterwards received, and deducting the warrants he had paid out. Held, that his sureties for his second term were liable for the amount which his own official books thus showed him to be owing.—PUNDMANN v. SCHOENEICH, Mo., 45 S. W. Rep. 1112.

88. PARENT AND CHILD—Contracts for Services.—Where plaintiff went to live with defendants when a child, and continued to live with them as one of their family after becoming of age, the presumption is that his services were gratuitous, and to recover he must overcome this presumption by showing either an express promise to pay for the services, or that the services were rendered and received with the expectation of being paid for.—SALVADOR v. FEELEY, Iowa, 75 N. W. Rep. 476.

89. PARTNERSHIP—Retiring Partner—Release.—A partner retiring from a firm after the purchase of goods by it is not released from liability, although the seller thereafter extends the time of payment to the continuing partner.—BRANNUM v. WERTHEIMER-SWARTZ SHOE CO., Ala., 23 South. Rep. 689.

90. PLEADING—Set-off and Counterclaim.—Where a counterclaim is pleaded by defendant in an action to recover rent, plaintiff may, in reply, set up demands he has against defendant by way of set-off, which could not have been joined with the original cause of action, under Code 1873, § 2666, providing that matter in the answer may be confessed, and any new matter which avoids the same, not inconsistent with the petition, alleged.—ILLSLEY v. GRAYSON, Iowa, 75 N. W. Rep. 518.

91. POWER OF ATTORNEY—Authority to Compromise Suit.—A power of attorney given by a plaintiff in a pending suit, which empowered the agent "to carry on and conduct to final consummation, or to compromise" the case, and all damages or demands therein claimed in such manner and on such terms as to him might seem expedient, does not authorize the agent to withdraw the litigation from the court in which it is pending, and by agreement with the defendants to create a special tribunal to determine the rights of the parties. The power given to compromise implies the exercise by the agent of his own judgment as to the terms accepted, and cannot be delegated by the agent to any other person or tribunal.—CITY OF NEW YORK v. DU BOIS, U. S. C. C., W. D. (Penn.), 86 Fed. Rep. 889.

92. PRINCIPAL AND AGENT—Purchases by Agent of Principal's Property—Tax Deeds.—That the rule, that an agent cannot speculate with property of the principal under his charge, to his prejudice, renders voidable a tax deed obtained by such agent, of such property, which is satisfied in equity, however, by requiring the principal, as terms of avoiding such deed, to reimburse the agent for the expenditures necessary to protect such principal's interest in the land, with interest thereon.—DANA v. DULUTH TRUST CO., Wis., 75 N. W. Rep. 429.

93. PRINCIPAL AND SURETY—Bonds.—The sureties on a bond which provided that the obligor should pay over all moneys collected during the continuance of the present agency or "any future agency" cannot escape liability because a new contract of agency had been afterwards entered into between the obligor and the obligee.—NEW YORK LIFE INS. CO. v. LOOMIS, Wis., 75 N. W. Rep. 421.

94. PUBLIC LANDS—Effect of Patent.—A person cannot defend against a patent issued on an entry in a local land office for public land, which was subject to disposal by the land department, on the ground that he was in actual possession at the time of its issuance, where he had taken no steps to secure the title.—JOHNSON v. DREW, U. S. S. C., 18 S. C. Rep. 800.

95. PUBLIC LAND—Railway Grant—Prior Occupancy.—A land company entered into possession of a tract of land as a town site, but filed no plat for about two years. In the meantime a railway company constructed its line across the tract, and claimed title to a strip 400 feet wide, as a right of way, under the act of congress incorporating it. Several years after, the tract was granted to the mayor, in behalf of the city, as a town site. Held, that the title of a grantee of the city could not be carried back so as to defeat the title of the railway company.—NORTHERN PAC. R. CO. v. SMITH, U. S. S. C., 18 S. C. Rep. 794.

96. QUIETING TITLE—Compelling Bringing of Suit.—Under St. 1893, ch. 340, providing that where the record title to property is clouded by an adverse claim, or by the possibility thereof, the owner may file a petition to compel such adverse claimant to litigate his rights, a railroad claiming a right to an easement in lands, but not having yet possessed them—its needs not requiring them—cannot be compelled, at the suit of the owner of the fee, to litigate its rights; the two rights existing together, and not adverse to each other.—MAY v. NEW ENGLAND R. CO., Mass., 50 N. E. Rep. 652.

97. RAILROAD COMPANY—Injury to Stock—Duty to Fence.—It is not the duty of railroads to fence such places along their lines as are used for loading or discharging freight.—CORNELL v. MANISTEE & N. E. R. CO., Mich., 75 N. W. Rep. 472.

98. RECEIVER—Appointment.—A court of equity will not appoint a receiver for a corporation on the ground of insolvency, unless the proof of insolvency be clear, and the best interests of creditors demand it.—FT. WAYNE ELECTRIC CORP. v. FRANKLIN ELECTRIC LIGHT CO., N. J., 40 Atl. Rep. 441.

99. RECEIVER OF STREET RAILROAD—Regulations.—Receivers appointed to manage and operate a street railway may exercise large discretionary powers as to details of management, and their judgment in such matters will not be interfered with by the court appointing them unless the act done is a manifest abuse of power.—MORLEY v. SNOW, Mich., 75 N. W. Rep. 466.

100. REMOVAL OF CAUSES—Federal Question.—A corporation purchasing a railroad at foreclosure sale in a federal court, and assuming as part of the consideration all liabilities incurred by the receivers of that court in their management, is not entitled to remove a suit to enforce such a liability, on the ground that it involves a federal question, because the receivers, if sued, could have removed the suit on that ground.—REED v. NORTHERN PAC. RY. CO., U. S. C. C., D. (Minn.), 86 Fed. Rep. 817.

101. SALE—Executed Contract. — An unrecorded bill of sale of cattle is not an executed contract, where the cattle are left in possession of the seller, and are to be passed upon, accepted, and paid for by the buyer before being driven from the seller's pasture.—EDWARDS v. IRVIN, Tex., 45 S. W. Rep. 1026.

102. SALE ON CONDITION — Evidence. — An allegation that a certain sale of real estate was to be void if a

certain manufacturing corporation did not locate its plant on a certain tract of land was not supported by evidence that the only condition of such sale was that the vendor should subscribe for sufficient stock of such corporation to make up a certain specified sum. —MANNING v. PETERS, Iowa, 75 N. W. Rep. 493.

103. SLANDER — Punitory Damages. — Where the allowance of punitory damages for slander has been submitted to the jury, and a verdict returned in an entire sum which is clearly excessive, the court cannot apportion such sum between compensatory and punitory damages, and, on *remittitur* of the latter being filed, enter judgment for the balance.—REED v. KEITH, Wis., 75 N. W. Rep. 392.

104. SPECIFIC PERFORMANCE — Contracts — Parol Agreement to Convey Land.—Where a parent makes a parol promise to a child to convey land if the child will take possession of, reside upon, and improve it, and, in reliance on the promise, the child takes possession, and makes permanent and valuable improvements, specific performance will be decreed.—FOUTS v. ROOF, Ill., 50 N. E. Rep. 653.

105. SPECIFIC PERFORMANCE—Uncertainty.—The witnesses for the complainant testified to a verbal agreement by which the defendant granted it the use of a certain bridge, passenger station, and tracks. The complainant was unable to show the terms on which it was to use the station, or the amount of the track that was granted, except the right to use all necessary terminals. The general superintendent of the defendant, with whom the agreement was alleged to have been made, contradicted the testimony, while the documentary evidence pointed to the absence of any definite arrangement between the parties. Held, that no definite agreement capable of being enforced was entered into.—LAKE ERIE & W. R. CO. v. MICHIGAN CENT. R. CO., U. S. C. C., D. (Ind.), 86 Fed. Rep. 840.

106. TAXATION—Injunction—Corporations.—A bill by a corporation to enjoin the collection of a tax against stockholders will lie, although there are no dividends belonging to the stockholders on hand, out of which it would have to pay tax, if collected.—KNOPF v. FIRST NAT. BANK OF CHICAGO, Ill., 50 N. E. Rep. 660.

107. TRADE NAMES — Good Will — Injunction.—W B and R B conducted a school founded by their grandfather in 1793. In 1861, R withdrew, and W incorporated the "B School," reserving to himself the right of property in the name and reputation of the school, in which R acquiesced when he resumed connection, in 1865. In 1879, R got control of the school, W having died in 1873, and in 1891 removed it to another city. The widow and children of W are conducting a school at the old site, under the style of the "W B School." Held, that they are entitled, through the right of W, to share in the B name and reputation, and to assert successorship to the school founded in 1793.—BINGHAM SCHOOL v. GRAY, N. Car., 30 S. E. Rep. 304.

108. TRIAL—Misconduct of Jurors.—Jurors may not state to fellow-jurors, while considering their verdict, facts relative to issues in the case within their own personal knowledge, but not of the evidence introduced. They should make the same known during the trial, and, if desired, testify as witnesses.—EWING v. HOFFINE, Neb., 75 N. W. Rep. 537.

109. VENDOR AND PURCHASER—Marketable Title.—Under Rev. St. § 4207, providing that no action for possession or recovery of realty shall be maintained unless plaintiff or his predecessor was seised or possessed of the premises within 20 years before action, one who for 20 years has been in peaceable and uninterrupted possession of lands has a marketable title which a purchaser who has stipulated for a clear and indefeasible title is bound to accept.—NELSON v. JACOBS, Wis., 75 N. W. Rep. 406.

110. VENDOR AND PURCHASER—Sale of Mining Lands—False Representations.—Prospective purchasers of mining property have a right to rely on statements made to them by the owners as to the presence of extensive beds of ore at the bottom of certain pits and trenches, and are not called upon to go into them and determine the truth by dipping out the water or digging out the earth with which they are partially filled. —GREEN v. TURNER, U. S. C. C. of App., Seventh Circuit, 86 Fed. Rep. 837.

111. VENDOR AND VENDEE — Purchase of Land Pendente Lite.—A purchaser of real estate, during the pendency of a suit for its partition, from a party to such suits, is as much bound by the disposition made of the real estate by the decree rendered in such action as his grantor.—CLARK v. CHARLES, Neb., 75 N. W. Rep. 563.

112. VENDOR AND VENDEE—Warranty.—A vendor conveyed land by warranty deed, but did not have title to all the tract, the superior title to a portion being in his vendee, which was unknown at the time of the conveyance. The vendee sued to recover upon breach of warranty. Held that, there being no eviction, such action could not be maintained.—RANCHO BONITO LAND & LIVE-STOCK CO. v. NORTH, Tex., 45 S. W. Rep. 994.

113. WATER COMPANIES—Duties — Rates. — A water company is a *quasi* public corporation, and, by the acceptance of its franchise, is bound to supply all persons along the line of its mains without discrimination and at uniform rates.—GRIFFIN v. GOLDSBORO WATER CO., N. Car., 30 S. E. Rep. 319.

114. WATER COURSE—Prior Appropriation. — An action for the diversion of water from a stream cannot be maintained unless plaintiff has a right to the waters of the stream of which it is being deprived by defendant, or the ditches which it seeks to have abated are interfering with rights which it would otherwise enjoy.—PLATTE VALLEY IRR. CO. v. BUCKERS IRR., MILLING & IMP. CO., Colo., 53 Pac. Rep. 334.

115. WILL—Devise to Children of Testator.—A devise of lands to the two children of the testator, with the provision that, "should either die without heirs capable of inheriting, all such one's share and legacies under this will shall inure to the survivor," vests in each an estate in fee, determinable upon the contingency of death without children; and upon that contingency the estate of the deceased child passes to the other, by way of executory devise, although the deceased child leaves a husband surviving her.—DURFEE v. MACNEIL, Ohio, 50 N. E. Rep. 721.

116. WILL—Equitable Jurisdiction—Construction.—A wife, by her will, devised notes held against her husband to her sister, and directed that they be not enforced during his life, except so far as to require annual payment thereon to prevent the running of limitations, in order to shield him from being harassed or embarrassed by said notes during his life. Held, that the court has equitable jurisdiction to construe such provisions, and determine how much the annual payment should be which could be enforced without a new action, or whether any payment at all need be made so as to prevent the embarrassment of the husband, and at the same time stop the running of limitations.—MILLER v. DRANE, Wis., 75 N. W. Rep. 413.

117. WILLS—Issue — Survivorship.—Where a testator devises property for the use of his brothers and sisters, and to the "child or children" of deceased brothers or sisters, by representation, with remainder over in fee to such beneficiaries after 21 years, the "child or children" to take the same share the father or mother would have taken if living, and, in case of death of any brother or sister leaving no "issue," remainder over to the survivors, the meaning of "issue" is limited by "child or children," and only immediate offspring is intended by such terms.—ARNOLD v. ALDEN, Ill., 50 N. E. Rep. 704.

118. WITNESSES—Impeachment.—A party voluntarily calling a witness in his own behalf was allowed, in the course of his examination, to read from his testimony given in another case, and to examine him in reference thereto in order to contradict him. Held error, since a party could not impeach his own witness.—COLLINS v. HOEHLE, Wis., 75 N. W. Rep. 416.